



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: DRI, FF

Introduction

This hearing dealt with an application by the tenant to dispute the notice of rent increase served by the landlord and for the recovery of the filing fee. Both parties attended the hearing and had opportunity to be heard. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is the amount of the rent increase in keeping with Legislation? Was the tenant notified of the rent increase in a timely manner?

Background and Evidence

The tenancy began in 2000. The monthly rent prior to March 2014 was \$1,015.00. The tenancy agreement was entered into by the landlord and two tenants. Approximately four years ago, the female tenant moved out. The tenant stated that management of the rental units changed hands a few times during his tenancy and that he had had several conversations with the various managers to inform them that the female tenant no longer resided in the rental unit. Both parties agreed that the tenancy agreement was not amended.

The landlord stated that a rent increase is imposed in March of every year. All the rent increase notices were made out in the name of the female tenant and mailed or delivered to the rental unit. Both parties agreed that there were no prior problems resulting from addressing the notices to the female tenant alone. The landlord filed copies of rent increase notices from 2009 to the latest one to confirm that all notices were made out in the name of the female tenant alone.

The tenant testified that he received a notification from Canada Post regarding the registered mail, but since it was in the name of the female tenant, he did not pick it up. The tenant stated that he had no way of knowing that the package contained a notice of rent increase.

The tenant stated that he was only notified of the rent increase on March 02, 2014. The tenant stated he did not pay the additional rent and on March 26, 2014, the landlord served him with a notice to end tenancy for rent owed. The tenant's position is that since he was notified in March, the increase should be effective on July 01, 2014.

The landlord argued that the tenant was served the notice by registered mail and chose not to pick it up and therefore the effective date of March 01, 2014, as stated on the notice stands.

Analysis

Sections 42 and 43 address the timing, notice and amount of rent increases permitted by Legislation

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

The allowable percentage rent increase for each calendar year is calculated according to the inflation rate. The rate for the year 2014 is 2.2%. Based on the rent increase permitted by the Regulations, the landlord may increase the rent by \$22.33.

In this case I find that the tenant was served with a rent increase in the approved format, and in keeping with the increase permitted by legislation.

I must now determine the date that the tenant was notified of the rent increase. The landlord served the notice by registered mail in a package addressed to the female tenant, who has not resided in the rental unit for the past four years. I find that it is reasonable on the part of the tenant to refuse to pick up mail that was not addressed to him. I further find that the notice was returned to the landlord and the landlord did not follow up by taking action to determine the reason for the return of the notice of rent increase.

Based on the above, I find that the tenant was notified of the rent increase in March 2014 and therefore in keeping with the Legislation, this increase will take effect on July 01, 2014.

Conclusion

Effective July 01, 2014, the tenant will pay rent in the amount of \$1,037.00. Since the tenant's application is successful, I award the tenant the recovery of the filing fee. The tenant may make a onetime deduction of \$50.00 from a future rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 15, 2014

Residential Tenancy Branch

