



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

DRI, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein they sought to dispute a rent increase and to recover the filing fee.

Issues to be Decided

1. Are the Tenants entitled to recover the rent payments made in excess of the allowable amounts pursuant to section 43 of the *Residential Tenancy Act*?
2. Should the Tenants recover the filing fee?

Background and Evidence

K.C. testified on behalf of the Tenants and provided evidence as to the tenancy as follows: the tenancy began January 1, 2013; monthly rent was payable in the amount of \$1,700.00 and the Tenants paid a security deposit in the amount of \$900.00. K.C. further testified that as there were three renters, they offer to pay \$300.00 each for the security deposit.

Introduced in evidence was a copy of a Notice of Rent Increase dated December 1, 2013 wherein the Landlord notified the Tenants he intended to raise their rent by \$85.00 such that they would pay \$1,785.00 commencing March 1, 2014.

K.C. testified that the Landlord then sent a further Notice of Rent Increase wherein the rent was raised to \$1,850.00 commencing January 1, 2015. The second notice was not provided in evidence.

K.C. stated that they paid the additional rent as requested, and when they attempted to raise their concerns with the Landlord about the amounts, the Landlord indicated the additional amount was required to pay costs associated with the municipality in which the rental unit was located.

The Tenants dispute the rent increase as it is in excess of that which is permitted by the regulations. The Tenants note that the permitted amounts for a rent increase which takes effect in 2014 was 2.2% and in 2015 it was 2.5%.

The Landlord testified that when he issued the two Notices of Rent Increase he was simply unaware of the legislated limit on such increases. He submitted that as he used the appropriate form from the Residential Tenancy Branch to inform the Tenants of the rent increase, and they provided him post-dated cheques to cover the new amounts, that he should be permitted to retain the amounts collected. He further stated that he had additional strata charges, and other expenses relating to the rental unit which necessitated an increase. He submitted that as the Tenants did not dispute the rent increase when it was first requested that they should be precluded from receiving a reimbursement.

The parties agreed that the excess rent collected in 2014, which was over and above the amount permitted, was \$37.40 per month, or \$374.00 for the months March through December 2014. The parties further agreed that the excess amount of rent collected in 2015 which was over and above the amount permitted was \$69.16 per month, or \$760.76 for the months January through November 2015. The parties further agreed that the total amount paid over and above that which was permitted is **\$1,236.76**.

The parties further agreed that the permitted increase would have resulted in a current monthly rent payment of \$1,780.84.

Analysis

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.
- (3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.
- (4) [Repealed 2006-35-66.]
- (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The amount of the rent recovered by the Landlord pursuant to his two Notices of Rent Increase exceed the permitted amounts; consequently, the Tenants are entitled to compensation for the overpayment.

As the Tenants application had merit, I also award them recovery of the \$50.00 filing fee.

Pursuant to section 43(5) I Order that the Tenants may deduct the sum of \$1,286.76 from the December rent (which is set at \$1,780.84) resulting in a one-time payment of \$494.08 as full and final satisfaction of the rent owing for December 2015.

The parties advised that a further hearing was scheduled on December 16, 2015 at which time the Landlord's application for an Order of Possession based on a Notice to End Tenancy for Cause was to be heard. Should the Landlord be unsuccessful and the tenancy continue, monthly rent shall continue at the rate of \$1,780.84 until changed in accordance with the *Residential Tenancy Act*.

Conclusion

The rent increases occasioned by the Landlord's Notices were in excess of the amounts permitted by the *Residential Tenancy Act* and the *Regulations*.

The current rent, had it been raised appropriately, would be \$1,780.84.

The Tenants are permitted to reduce their December rent by the sum of \$1,286.76 representing \$374.00 in excess rent for 2014 and \$760.76 in excess rent for 2015 and the \$50.0 filing fee; the Tenants shall pay rent in the amount of \$494.08 for the month of December 2015. Monthly rent shall continue at a rate of \$1,780.84 until changed in accordance with the *Residential Tenancy Act*.

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: November 30, 2015

Residential Tenancy Branch

