



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 pursuant to the *Residential Tenancy Act*, to dispute a rent increase, to recover overpaid rent and to recover the filing fee

The tenant stated that she sent her notice of hearing package by registered mail on January 22, 2016 to the address at which the landlord resides and provided a copy of the tracking slip. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Did the landlord increase rent in compliance with the *Act*? Did the tenant overpay rent? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on May 01, 2012. A copy of the tenancy agreement was filed into evidence. The monthly rent at the start of tenancy was \$900.00 payable on the first day of each month.

Both parties agreed that on September 30, 2014, the landlord served the tenant with a notice of a rent increase in the amount of \$50.00. The new rent of \$950.00 became effective on January 01, 2015. The tenant did not dispute the notice and continued to pay rent in the amount of \$950.00 for the entire year of 2015.

Both parties also agreed that on September 28, 2015, the landlord served the tenant with a notice of a rent increase in the amount of \$27.56 thereby increasing the rent to \$977.56. This increased rent became effective on January 01, 2016. The tenant paid rent in the increased amount of \$977.56 and applied for dispute resolution on January 22, 2016.

The tenant accepted the increase and continued to pay rent every month on time. However, the tenant has now applied for a refund of the excess rent paid due to a non-compliant rent increase.

The landlord testified that for the first two and a half years of tenancy, he did not impose a rent increase and if he had done so, the rent payable today would have been higher than what the tenant is currently paying. The landlord also stated that comparable units are paying a much higher rent.

Attempts to mediate a settlement were unsuccessful. The tenant made an offer to accept \$200.00 towards overpaid rent and pay a monthly rent of \$950.00 effective April 01, 2016. The landlord refused to accept the offer because he stated he needed to consult with his spouse before accepting an offer.

Analysis

Pursuant to section 43 of the *Residential Tenancy Act*, a landlord may impose a rent increase only up to the amount calculated in accordance with the Regulations, or ordered by the director on an application by the landlord or agreed to by the tenant in writing. If a landlord collects a rent increase that does not comply with the Regulations, the tenant may deduct the increase from rent or otherwise recover the increase.

In this case, the landlord imposed a rent increase effective January 01, 2015 at a rate that exceeded the approved rate was 2.5%. This increase was not ordered by the director as the landlord had not made application for a rent increase in excess of the legislated amount and was not agreed to by the tenant in writing. This non-compliant increase raised the rent from \$900.00 to \$950.00 instead of the legislated amount of \$922.50. Therefore the tenant overpaid rent in the amount of \$27.50 per month for a period of 12 months. Accordingly, the tenant overpaid rent in the total amount of \$330.00 for this period.

The second rent increase was effective January 01, 2016. The landlord had provided proper notice for the new rent of \$977.56 and had applied the correct rent increase rate of 2.9%. However this rate was applied to the rent of \$950.00 instead of the appropriate rental amount of \$922.50. This non-compliant increase raised the rent to \$977.56 instead of the legislated amount of \$949.25. Therefore the tenant overpaid rent in the amount of \$28.30 per month for a period of 3 months in 2016. Accordingly, the tenant overpaid rent in the total amount of \$84.90 for this period.

Pursuant to section 43 of the *Residential Tenancy Act*, I find that the landlord imposed a rent increase in contravention of the Regulations and therefore the tenant is entitled to recover the amount of the increase.

Accordingly I find that the tenant has established a claim of \$330.00 for overpaid rent in 2015 plus \$84.90 for overpaid rent in 2016. Since the tenant has proven her case she is entitled to the recovery of the filing fee of \$100.00 for a total claim of \$514.90.

The rate of rent that the tenant must pay for April 2016 and onwards is \$949.25. The tenant may make a onetime deduction of \$514.90 off rent for April 2016. The rent payable for April 2016 is \$434.35. Rent for the following months will be \$949.25, until the rent is increased in compliance with the Regulations or pursuant to an order from the Director.

Conclusion

The tenant may make a onetime deduction off rent for April 2016 in the amount of \$514.90. The tenant must pay \$434.35 as rent for April 2016. Rent is set at \$949.25 effective May 2016 until further notice of a rent increase.

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: March 08, 2016

Residential Tenancy Branch

