



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR

Introduction

The tenants apply to dispute a rent increase and to set aside a ten day Notice to End Tenancy for unpaid rent received dated February 3, 2016. The two issues are entwined as the ten day Notice demands an amount of rent based on the rent increase. If the rent increase was not valid, then the amount demanded in the Notice as unpaid rent is too much, rendering the Notice invalid.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing. An exception was made regarding rent receipts contained in the parties' evidence packages. Both sides denied receiving the other's evidence package, but the essential receipts were common to both and so no prejudice would result in having them entered as evidence at this hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the monthly rent is \$907.12 as the landlord claims or \$900.00 as the tenants claim?

Background and Evidence

The rental unit is a one bedroom lower suite in a six-plex building. The tenancy started in January 2014 on a month to month basis. The rent began at \$885.00, due on the "31st" of each month according to the written tenancy agreement.

The landlord holds a \$442.50 security deposit and a \$250.00 pet damage deposit.

The tenant's wished to testify about what good tenants they've been. The landlord wanted to express what bad tenants they have been. That issue was not raised by the application and is not pertinent to the question before me and the parties were informed that such evidence was not relevant.

In December 2014 the landlord gave the tenants a "Notice of Rent Increase" in the form provided by the Residential Tenancy office. The rent increase was in the amount of \$22.13, half a cent over the 2.5% increase percentage permitted a landlord by regulation and against which a tenant cannot object (s. 43 of the *Residential Tenancy Act*). The tenants did not raise this overage as an issue. The rent was purported to be increased to \$907.13 per month, to be effective May 1, 2015.

The tenants say that they went to the landlord and told her their income could not support such an increase. They say that they negotiated a \$15.00 increase and have been paying that amount directly to the landlord for each month since. They produce receipts given by the landlord for the \$15.00 rent increase (their original rent of \$885.00 was and continues to be paid directly to the landlord by the welfare office).

They say that in November 2015 the landlord saw a "big screen TV" in their suite and decided they could pay the full rent increase not just the \$15.00 and so demanded the full rent plus arrears.

They adduce the email statement of a former neighbour and tenant of the landlord who overheard the \$15.00 per month rent increase agreement being reached between the parties.

The landlord denies any agreement to compromise on the rent increase demanded in her December 2014 Notice of Rent Increase. She says the receipts show that she has been calculating the unpaid portion of the increase that the tenants have failed to pay.

Analysis

I have examined the rent receipts in detail and conclude that they corroborate the tenant's story that the parties compromised on a \$15.00 per month rent increase.

Contrary to the landlord's position, the receipts indicate that they are for \$15.00 for the "increase." There is no indication in the receipts that the tenants owed more money, that is to say, any balance over the \$15.00.

The November receipt says "fifteen dollars rent increes [sic] . . . 1st November 2015 pay full amount \$22.13."

This receipt shows that the landlord was attempting to revert to the initial rent increase amount.

I find she could not do so. She had made a bargain with the tenants at the \$15.00 increase and must live by it.

Conclusion

The tenants' application is allowed. The Notice to End Tenancy dated February 3, 2016 is hereby cancelled.

The tenants' rent is \$900.00 per month.

The tenants do not claim recovery of any filing fee.

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 23, 2016

Residential Tenancy Branch

