



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI OLC FF

Introduction

This hearing convened pursuant to the tenants' application to dispute rent increases as well as for an order that the landlord comply with the Act, regulation or tenancy agreement. The tenants and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Are the rent increases valid?

If not, what is the current rent and how much rent did the tenants overpay?

Should I order the landlord to comply with the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began on May 1, 2012, with monthly rent of \$1,950.00 payable in advance on the first day of each month.

On May 1, 2014 the landlord gave the tenants notice that as of May 1, 2014 their rent would increase to \$2,110.00. This is an increase of 3.9 percent. The maximum allowable increase at that time was 2.2 percent.

On May 1, 2015 the landlord gave the tenants notice that as of May 1, 2015 their rent would increase to \$2,160.00. This is an increase of 2.4 percent. The maximum allowable increase at that time was 2.5 percent.

On April 30, 2016 the landlord gave the tenants notice that as of May 1, 2016 their rent would increase to \$2,360.00. This is an increase of 9.3 percent. The maximum allowable increase at this time is 2.9 percent.

The tenants submitted that none of the notices of rent increase served on them were valid. The tenants stated that they did not agree to the increases verbally or in writing, they just started paying the increases.

The landlord replied that the tenants verbally agreed to the increases in the first three years. The landlord stated that the tenants signed a written agreement for the following rent increase; however, he did not provide a copy of that document in his evidence. The landlord acknowledged that he and the tenants did not enter into any new tenancy agreements. The landlord stated that it was not formal, they did it as friends.

Analysis

Sections 41, 42 and 43 of the Act require that rent increases be in the prescribed form, that they be served at least three clear months before the increase is to take effect, and are within the maximum allowable percentage set out in the regulations. None of the notices of rent increase served by the landlord comply with the service requirement, and all but one increase were beyond the permissible amount. Because the first notice of rent increase was not valid, all subsequent notices were also invalid because they were based on the incorrect increase in 2013. The current rent is therefore \$1,950.00.

Under section 43(5) of the Act, the tenants may recover any overpayment of rent. The tenants have overpaid their rent by \$960.00 from May 2013 to April 2014; \$1,920.00 from May 2014 to April 2015; and \$2,520.00 from May 2015 to April 2016. The tenants may therefore recover \$5,400.00 from the landlord. The tenants may also recover any further overpayment of rent beyond the monthly rent of \$1,950.00.

In this case, I find it appropriate to order the landlord to comply with the Act and regulation in regard to additional rent increases.

As the tenants' application was successful, they are entitled to recovery of their filing fee of \$100.00.

Conclusion

The notices of rent increase are not valid.

The current rent remains at \$1,950.00 until such time as the landlord takes proper steps under the Act to increase the rent.

I have ordered the landlord to comply with the Act and regulation in regard to additional rent increases.

The tenants are entitled to \$5,500.00, and I grant the tenants an order under section 67 for this amount. The tenants may serve the landlord with this monetary order or they may deduct from their rent of \$1,950.00 until this amount is satisfied. The tenants may also deduct from rent any further overpayments of rent beyond \$1,950.00.

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: July 22, 2016

Residential Tenancy Branch