



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

DRI

Introduction

Following an adjournment from the original hearing date this hearing was convened in response to an application by the Tenant disputing a rent increase pursuant to section 43 of the *Residential Tenancy Act* (the "Act"). It is noted that the application does not include a claim for recovery of the filing fee.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Has the Tenant been given an allowable rent increase?

Background and Evidence

The following are undisputed facts: The Tenant had rented the unit along with other tenants for the period September 1, 2012 to September 30, 2014 following which the Tenant moved out. The Tenant later asked the Landlords again to rent the unit and a tenancy agreement was signed between just the Tenant and the Landlords. This tenancy started on February 1, 2015 and rent of \$1,000.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. The Landlord verbally informed the Tenant that the rent would increase to \$1,300.00 as of September 2016 and the Tenant started to pay this amount as of October 1, 2016. The Tenant moved out of the unit on July 15, 2016.

The Tenant disputes the rental increase paid.

The Landlord states that the Tenant verbally agreed to the rent increase for September 2015 but did not pay this amount until October 2015. The Landlord states that they only rented the unit at the amount of \$1,000.00 temporarily as they thought the Tenant may purchase the property. The Landlord states that they raised the rent to the rent level paid in the past tenancies by the Tenant as the \$1,000.00 per month was insufficient rental income for their costs of the property. The Landlord states that the Tenant failed to pay rent for February and August 2015 and indicates that it will pursue a claim against the Tenant for these unpaid rents during the tenancy and for damage to the unit.

Analysis

Section 43 of the Act provides that a landlord may impose a rent increase only up to the amount:

- calculated in accordance with the regulations;
- ordered by the director on an application by the Landlord for a rent increase greater than allowed by the regulations; or
- agreed to by the tenant in writing.

The allowable rental increase for 2015 was set at 2.5%. Section 43 further provides that 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.

Based on the undisputed evidence of the Parties I find that, inter alia, the Landlord increased the rent in an amount greater than allowed under the Act and regulations and collected this increase for the period October 2015 to June 2016, inclusive. As a result I find that the Tenant is entitled to recovery of **\$2,700.00**. During the hearing the overpayment for each of the months was calculated and in making those calculations the Tenant did not correct the calculation based on only half the rent being paid for July 2016 and I note that the Landlord did not give any evidence that any rent was owed for this month. I therefore find that the Tenant is only entitled to recovery of **\$150.00** for the increase for July 2016.

The Tenant is entitled to recovery of a total amount of **\$2,850.00**.

The Parties are directed to contact the Residential Tenancy Branch for any questions they may have in relation to the security deposit. I note that the Landlord remains at liberty to pursue a claim in relation to unpaid rents except for July 2016 and for damage to the unit.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$2,850.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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

Dated: August 12, 2016

Residential Tenancy Branch