



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTHALL PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on December 31, 2016. The Tenant filed seeking an order to dispute a rent increase and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

Each party affirmed they served the other with copies of the same documents that they had served the Residential Tenancy Branch (RTB). Each party acknowledged receipt of those documents from the other and no issues regarding service or receipt were raised. As such, I accepted the submissions from both parties as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Although all relevant submissions were considered, not all are listed in this Decision.

Issue(s) to be Decided

Should the rent increase that is to be effective April 1, 2017 be upheld or cancelled?

Background and Evidence

The Tenant has occupied the rental unit since April 15, 2010 based on a tenancy agreement with the previous landlord. As per that tenancy agreement rent began at \$800.00 per month which was subsequently increased to \$817.00 effective June 1, 2014. On approximately April 1, 2010 the Tenant paid \$400.00 as the security deposit.

During the winter of 2014 into the spring of 2015 the Tenant's rental unit suffered a major water leak. The repairs took upwards of eleven weeks to repair during which the Tenant's living room wall was removed down to the studs and was open to the elements.

On February 20, 2015 the Tenant was served a Notice of Rent Increase that was to increase the rent from \$817.00 to \$837.00 effective June 1, 2015.

I heard the Tenant stated he objected to the June 1, 2015 rent increase due to the ongoing repairs. He asserted the repairs were not handled well and after discussions with the Landlord they mutually agreed the rent increase would not go into effect to compensate for the condition of the rental unit during the repairs.

The Tenant testified the administrator contacted him on June 2, 2015 to advise him he had short paid his rent as he did not include the increase amount. The Tenant stated he informed the administrator of the agreement he had entered into with the Landlord and suggested that she confirm with him. The Tenant stated he did not hear back from the administrator or the Landlord and he continued to pay \$817.00 for his monthly rent.

The Tenant now disputes a Notice of Rent Increase he was served on December 12, 2016 which indicates his current rent is \$837.00. He asserted the Landlord is trying to implement two rent increases in the same year by showing his current rent as \$837.00 and not \$817.00 and then basing the 2017 increase on the higher amount; raising his rent to \$867.00 effective April 1, 2017.

I heard the Landlord confirm that water had egressed into the Tenant's rental unit around the timing of the 2015 rent increase. He stated he did have a conversation with the Tenant regarding that rent increase and compensation. The Landlord stated he had told the Tenant to "just keep paying what you are currently paying". The Landlord submitted the Tenant was also provided one month's free rent as compensation for the remediation which was finalized in December.

The Landlord testified the Tenant was allowed to pay a lesser amount; however, nothing was ever put in writing. He stated in December 2016 he reviewed the circumstances and because the repairs were completed the Tenant's rent needed to come back to market rent.

The Tenant disputed the Landlord's submissions and stated the repairs were not completed until around May 2015. The Tenant asserted when he questioned the December 2016 Notice of Rent Increase the Landlord told him they were trying to bring his rent up to market value so they did not cancel the previous rent increase. He said they told him they simply credited his account to accommodate for the inconvenience during the repairs, which was not what their agreement was.

The Tenant argued he was never told that he was receiving a credit; rather, he was told to ignore the rent increase which was to be effective June 1, 2015 and continue paying

his previous amount of rent of \$817.00. The Tenant stated because they did not implement the rent increase in 2015 they cannot increase his rent in 2017 based on an amount he had not been paying.

The parties were given the opportunity to settle these matters; however, the Landlord felt he could not negotiate an rent increase that would be lower than an amount listed on the December 12, 2016 Notice of Rent Increase.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

I favored the Tenant's submissions that the parties mutually agreed the Notice of Rent Increase that was to be effective June 1, 2015 was cancelled or withdrawn when he was told to forget that rent increase. I favored the Tenant's submissions as they were consistent and plausible given the circumstances presented to me during the hearing. I favored the Tenant's submissions over the Landlord's as the Landlord failed to provide sufficient evidence that the Tenant was advised the rent increase was implemented and that his account was simply being credited. From his own submission the Landlord confirmed he told the Tenant to keep paying his previous rent amount and not the increased amount. Furthermore, there was insufficient evidence the Tenant was informed or agreed that the higher rent would be used in future calculations of rent increases.

After consideration of the totality of the evidence before me I find the Landlord was estopped from enforcing the Notice of Rent Increase issued February 20, 2015. Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency. In this case the Landlord's intention of implementing the June 1, 2015 rent increase were inconsistent and were not made clear to the Tenant at the time the Tenant was told to continue to pay his previous rent amount.

Based on the foregoing, I find the Notice of Rent Increase issued December 12, 2016 listed an incorrect amount for the Tenant's current rent of \$837.00 when it should have listed \$817.00. As a result that Notice listed an increased rent that would be more than the legislative amount if approved. Accordingly, I grant the Tenant's application and I Order the December 12, 2016 Notice of Rent Increase to be cancelled and it is of no force or effect

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review*]

of director's decision] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$100.00**, which is to be paid by the Landlord, pursuant to section 72(1) of the Act.

The parties are reminded of the provisions of section 72(2)(a) of the *Act*, which authorizes a tenant to reduce his rent payments by any amount the director orders a landlord to pay to a tenant, which in these circumstances is \$100.00. In the event this tenancy ends prior to the Tenant recovering the filing fee, he has been issued a Monetary Order in the amount of \$100.00. That Order is enforceable through Small Claims Court after service upon the Landlord.

The Landlord is at liberty to serve the Tenant a new Notice of Rent Increase, with the required three month notice, listing the correct current rent of \$817.00 and an increase amount within the legislated 3.7% for the 2017 calendar year.

Conclusion

The Tenant was successful with his application and the Notice of Rent Increase issued December 12, 2016 was cancelled and is of no force or effect.

This decision is final, legally binding, and 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: January 30, 2017

Residential Tenancy Branch