



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR DRI ERP LRE O

Introduction

This hearing dealt strictly with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for an order regarding a disputed additional rent increase pursuant to section 43.

The tenant originally applied for; cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; an order to the landlord to make repairs to the rental unit pursuant to section 33; authorization to change the locks to the rental unit pursuant to section 70; an order to set conditions on the landlord's right to enter the unit pursuant to section 70; and an order for any other relevant remedy under the Act. However, he has withdrawn these applications as a result of his decision to vacate the residence. The tenant sought a decision with respect to his dispute of an unauthorized additional rent increase to his rental unit

The landlord did not attend this hearing, although the hearing continued until 11:20 a.m. in order to enable the landlord to connect with this teleconference beginning at 11:00 a.m. The tenant, his co-tenant and his representative attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions during that time.

The tenant provided undisputed testimony that he personally served the landlord at his residence with his Application for Dispute Resolution ("ADR") on April 3, 2017: the same day he filed his application with the Residential Tenancy Branch ("RTB"). The tenant provided undisputed testimony that he personally served the landlord at his residence with his additional evidence package on April 5, 2017: the same day he filed the materials with the RTB. As a result of his testimony and the supporting testimony of his assistant, I find that the landlord was duly served with the tenant's ADR on April 3, 2017

and duly served with the tenant's additional evidence on April 5, 2017 both in accordance with section 88 and 89 of the Act *respectively*.

Issue to be Decided

Is the tenant entitled to an order regarding a disputed additional rent increase?

Background and Evidence

This tenancy began between the tenant DB and the landlords on September 1, 2016 with a monthly rental amount of \$600.00. The tenant claims that the landlord raised the rent by \$262.00 when his co-tenant moved in to the rental unit. Prior to vacating the unit, the tenant paid a rental amount of \$862.00 payable on the first of each month. The tenant testified that the landlord continues to hold the tenant's \$425.00 security deposit. The tenant testified that he paid a \$300.00 security deposit at the outset of this tenancy and ultimately, prior to the end of tenancy, provided the landlord with \$125.00 more towards the newly imposed, higher deposit amount of \$425.00.

The tenant testified that he had one useable bedroom at the outset of this tenancy but that, by agreement, the landlord provided a second useable bedroom by January 15, 2016. As a result, the tenant was able to move a co-tenant into the rental unit. The landlord required the signing of a new tenancy agreement with a new rental amount (and a new security deposit amount). The tenant signed a new tenancy agreement; and provided money to reach the new security deposit amount requested by the landlord. The tenant paid the new rental amount of \$862.00 in January, February, March and April 2017.

The tenant testified that, at the outset of this tenancy, the landlord lived upstairs on the residential premises and the tenant rented the bottom portion of the residential premises. After the second bedroom had been repaired and made useable, the tenant received a notice from a local government agency indicating that the rental unit does not meet code and is not a legal unit. Therefore, the tenant was told he must vacate the rental unit. The tenant vacated the unit.

Analysis

Residential Tenancy Policy Guideline No. 37 provides a practical framework with respect to rent increases. The basic annual rent increase under the Residential Tenancy Branch Regulations ("Regulations") is set by the Residential Tenancy Branch each year. Section 43(3) of the Act allows a landlord to apply to the Residential Tenancy

Branch for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase (an “additional rent increase”) in certain circumstances.

In this application, the tenant has applied on the ground that the landlord has raised the rent in an amount beyond the allowable amount as laid out in the Regulations and that therefore, the tenant is entitled to be compensated for the additional rent increase he paid over the course of four months. The landlord did not apply for a rent increase.

I note that the tenant has testified that the rent was raised when a second bedroom was provided to the tenant and when the co-tenant moved in to the rental unit. The tenant testified candidly that the landlord likely changed the rental amount because of the number of occupants residing in the rental unit as well as the change in the space available to the 2 tenants. However, the tenant testified that he did not agree to the rent increase nor did he receive any notice prior to the increase.

Policy Guideline No. 37 describes how a tenant might agree to an additional rent increase,

A landlord who desires to increase a tenant’s rent by more than the amount of the allowed annual rent increase can ask the tenant to agree to an increase that is greater than that allowed amount. If the tenant agrees **in writing** to the proposed increase, the landlord is not required to apply to an arbitrator for approval of that rent increase. **The landlord must still follow requirements regarding the timing and notice of rent increases.**

The tenant’s written agreement to a proposed rent increase must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars), **and the tenant’s agreement to that increase.** It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

[emphasis added]

While the tenant’s payment of the rent increase is not tantamount to an agreement to a rent increase, I note that, in these circumstances, the tenant paid the increased amount for the four months that remained of the tenancy as well as the new security deposit amount. I also note that while the tenant indicates he did not agree in writing as required

by the Act and the Policy Guidelines, he (and the new co-tenant) signed a new tenancy agreement and in that tenancy agreement wherein the tenant initialed all changes from the previous agreement. Below the rental amount, after marking the tenancy as “renewed” and noting that an additional television channel is included, the landlord wrote,

*All bylaws must be followed. **2 unit rental tenants** must be cordial. Fines for infractions are the responsibility of tenants*

[emphasis added]

Based on all of the circumstances described by the tenant, I find that the landlord did not contravene the Act by entering into a new agreement with the tenant and the co-tenant, determining a new rental amount and requiring a further security deposit amount. I find that the tenant’s signature within the rental agreement and acknowledgement with initials of the changes provides evidence of an agreement to the rent increase. Further, I find that the tenant’s candid testimony regarding the increased space and the additional occupant to the tenancy provide evidence of the reason for the additional rent increase. **I find that the tenant agreed to the rent increase.** Therefore, given the nature and reason for the increase and given the steps taken by the landlord to obtain an agreement, I dismiss the tenant’s application to recover funds for a rent increase paid.

Conclusion

I dismiss the tenant’s application for a monetary award.

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: May 11, 2017

Residential Tenancy Branch