



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with the tenants' application for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62 of the *Residential Tenancy Act* ("the *Act*").

The landlord and Tenant S.S. (the tenant) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidentiary package which was sent to them by way of registered mail on October 13, 2017. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with the Application and evidentiary package.

The tenant acknowledged receipt of the landlord's evidence which was left with them on December 11, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlord's evidence.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant provided written evidence that this tenancy began on June 01, 2012, with a monthly rent of \$2,100.00, due on the first day of each month. The landlord testified that they retain a security deposit in the amount of \$1,050.00.

The tenant also provided in written evidence copies of text messages and e-mails exchanged between the landlord and the tenants as well as copies of rent receipts, one of which shows the landlord requesting \$100.00 for an administrative late fee.

The landlord provided a copy of a dispute letter and text messages exchanged between the landlord and the tenants.

The tenant submitted that the landlord raised the rent through text message to the tenants by an illegal amount, from \$2,247.00 to \$2,400.00 effective as of April 01, 2017, which is an increase that is more than the allowable rent increase of 3.7% for 2017. The tenant further submitted that the landlord verbally requested to raise the monthly rent again from \$2,400.00 to \$2,500.00 effective as of September 01, 2017. The tenant stated that these rent increases were in addition to another rent increase that was given to the tenants in May of 2016 from \$2,100.00 to \$2,247.00 which was also more than the allowable rent increase and the notification for this rent increase in May 2016 was also only given through text message.

The tenant stated that when she requested the landlord to give rent increases in compliance with the *Act*, on the approved form and by the allowable rent increase permitted by the *Act*, the landlord reacted very negatively. The tenant submitted that they just want to know the amount of rent that they are legally required to pay to the landlord. In addition, the tenant testified that the landlord insisted on a \$100.00 fee to be paid for a late rent payment in August of 2017.

The landlord testified that no rent increase was given to the tenants prior to May 2016 and that the rent increase given to the tenants in that month was taking into account past rent increases since 2012. The landlord submitted that the tenants agreed to this rent increase although she admitted that there is no signed agreement between the landlord and the tenants to support this assertion. The landlord stated that when she sent text messages to the tenants and they did not respond, the landlord interpreted this lack of response from the tenants as their acceptance of the rent increases.

The landlord stated that they were not aware of the proper method of giving the tenants a legal rent increase but that they have since issued a proper Notice of Rent Increase form to the tenants in October 2017 to raise the monthly rent from \$2,247.00 to

\$2,337.00 effective as of February 01, 2017. No copy of the Notice of Rent Increase form was submitted into evidence but the tenants acknowledged receiving a Notice of Rent Increase in the approved form.

Analysis

Section 62(3) of the *Act* allows the director to make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies. When a party makes a claim for the landlord to comply with the *Act*, the burden of proof lies with the applicant to establish the claim.

Part 3, section 41 of the *Act* states that a landlord must not increase rent except in accordance with sections 42 and 43 of the *Act*, which only allow for a rent increase served in the approved form, at least 3 months before the effective date of the increase by an amount calculated in accordance with the regulations or for an amount agreed to by the tenant. The current allowable rent increase for 2016 was 2.9% and for 2017 it is 3.7%.

I find that the rent increases given to the tenants in May of 2016 and in April of 2017 were not in compliance with the *Act* as they were not given to the tenants in the approved form and were for more than the allowable rent increases permitted in their respective years.

I find that the monthly rent is \$2,100.00, as per the tenancy agreement as the monthly rent has not been increased in compliance with the *Act* since the tenancy agreement was signed. I find that even if the landlord increased the rent legally in October 2017, it has been calculated based on an incorrect amount of \$2,247.00. Section 43(5) of the *Act* establishes that if a landlord collects a rent increase that does not comply with Part 3 of the *Act*, the tenant may deduct the increase from rent or otherwise recover the increase.

Section 7(d) of the *Residential Tenancy Regulations (Regulations)* allows for a \$25.00 administrative fee for late payment of rent. I find that the late fee charged by the landlord in the amount of \$100.00 is in excess of the non-refundable fee of \$25.00 allowed by the *Regulations*.

Conclusion

I **order** that the monthly rent is \$2,100.00, as per the tenancy agreement, and for the landlord to comply with the *Act* for all future notice of rent increases, fees charged and interactions with the tenant.

Pursuant to section 72 of the *Act*, I order that the tenant may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of \$100.00, to recover the filing fee for this application.

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: January 08, 2018

Residential Tenancy Branch