



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC FF

Introduction

This hearing was convened upon the application of the tenant seeking an order directing the landlord to comply with the *Act* pursuant to section 62. The tenant was also looking to recover the filing fee associated with this application.

Both parties appeared at the hearing. The landlord confirmed receipt of the tenant's application for dispute resolution, while both parties confirmed receipt of each other's evidentiary packages.

Issue(s) to be Decided

Should the landlord be directed to comply with the *Act* and raise the rent in accordance with the legislation?

Can the tenant recover the filing fee?

Background and Evidence

Undisputed testimony was provided by the tenant that this tenancy began on December 15, 2015 and rent is currently \$1,464.00. A security deposit of \$725.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenant sought an order directing the landlord to comply with the *Act*. The tenant argued that she had received a request from the landlord for a rental increase that was in contravention to section 42 of the *Act*.

Both parties agreed that rent for the unit began at \$1,450.00 per month. In September 2016 rent was reduced to \$1,411.00 because the landlord no longer provided the tenant with cable.

A rent increase of \$53.00 was given to the tenant by the landlord on December 22, 2016. This increase which took effect on April 1, 2017 and established rent at \$1,464.00.

A second rent increase was given to the tenant on September 26, 2017. This rent increase sought to increase the rent by \$59.00, from \$1,464.00 to \$1,523.00 and was to take effect January 1, 2018. It is this September 2017 rent increase which the tenant is disputing.

The tenant argued that she had received 2 rent increases within a span of 12 months, and that the landlord had therefore breached section 42(1) of the *Act*, which states, "A landlord must not impose a rent increase for at least 12 months."

The landlord agreed with the timelines set forth by the tenant during the hearing; however, she disputed the effective date of the April 2017 rental increase. The landlord said that originally, a rent increase with an effective date of January 1, 2017 was posted on the doors of the rental units in the building by the building manager. The landlord continued by explaining that in mid-December 2016, the tenant informed the landlord that she did not receive this rental increase. The landlord explained that this notice was re-issued to the tenant with an effective date of April 1, 2017. The landlord said that this September 26, 2017 rental increase which was to take effect on January 1, 2018 was served in accordance with the date provided on rental increase which was not received by the tenant.

Analysis

Section 42 of the *Act* states the timelines which must be adhered to by a landlord seeking to increase rent in accordance with the *Act*. Subsection (1) states, "A landlord must not impose a rent increase for at least 12 months after whichever of the following applies...if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit, or if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this *Act*."

Based on the evidence and testimony presented at the hearing by both parties I find that the last rental increase took effect on April 1, 2017. The landlord may have

previously served the tenant with a rental increase which was to take effect on January 1, 2017; however, evidence was presented by both parties that this rental increase was not enforced by the landlord, and the last rent increase, made in accordance with the *Act* took effect on April 1, 2017.

I find that the landlord has breached the *Act* by attempting to increase the tenant's rent effective January 1, 2018. I find that rent is to remain at its current rate of \$1,464.00 until it is raised in accordance with the *Act*. The earliest date by which a rental increase may take effect is April 1, 2018.

As the tenant was successful in her application, she may recover the \$100.00 filing fee from the landlord. Pursuant to section 72 of the *Act* and in lieu of a monetary award, I allow the tenant to retain \$100.00 from a future rent payment on one occasion.

Conclusion

The tenant was successful in her application directing the landlord to comply with the *Act*. The landlord is directed not to increase the rent until at least April 1, 2018, 12 months after the effective date of the last rent increase, which in this case was April 1, 2017.

The tenant may withhold \$100.00 from a future rent payment on one occasion in satisfaction for a return of the filing fee.

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 16, 2018

Residential Tenancy Branch