



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *DRI, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, to dispute a rent increase, to recover overpaid rent and to recover the filing fee

The tenant stated that he served the landlord with the notice of hearing package by registered mail on August 17, 2017 and provided a tracking number. Despite having been served with the notice of hearing the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Did the landlord increase rent in compliance with the *Act*? Did the tenant overpay rent?
Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on August 01, 2015. A copy of the tenancy agreement was filed into evidence. The monthly rent was \$1,050.00 payable on the first day of each month. The tenant testified that the landlord informed him that even though utilities were included in the rent, because of the size of the tenant's family, he would have to pay an additional \$50 to \$100 to cover utilities, if necessary.

The tenant stated that in the winter of 2016, he gave the landlord a cheque for \$300.00 to cover the increased usage of utilities for the months of November, December 2016 and January 2017

The tenant testified that in February 2017, the landlord requested an additional \$100.00 for rent. The tenant reminded the landlord that he could not raise rent in that amount and he needed to give the tenant at least three months' notice. The tenant testified that the landlord informed the tenant that he was free to move if he wished to do so. The tenant stated that because he did not want to disrupt his children's schedules, he paid the additional \$100.00 every month until he moved out on August 15, 2017.

The tenant made this application after he moved out of the rental unit. He is claiming the return of \$100.00 per month for the period of February 2017 to August 2017 in the total amount of \$700.00.

Analysis

Pursuant to section 43 of the *Residential Tenancy Act*, a landlord may impose a rent increase only up to the amount calculated in accordance with the Regulations, or ordered by the director on an application by the landlord or agreed to by the tenant in writing. If a landlord collects a rent increase that does not comply with the Regulations, the tenant may deduct the increase from rent or otherwise recover the increase.

In this case, the landlord imposed a rent increase effective February 01, 2017 at a rate that exceeded the approved rate of 3.7%. This increase was not ordered by the director as the landlord had not made application for a rent increase in excess of the legislated amount and was not agreed to by the tenant in writing. This non-compliant increase raised the rent from \$1,050 to \$1,150.00 instead of the legislated amount of \$1,088.85. Therefore the tenant overpaid rent in the amount of \$61.15 per month for a period of 7 months.

However since the tenant had agreed to pay an extra \$100.00 for increased usage of utilities, I find it reasonable for the landlord to expect to receive an additional \$100.00 for the month of February 2017, at a time when temperatures are seasonally low.

Based on the above I find that the tenant overpaid rent in the amount of \$61.15 for the months of March, April, May, June, July and August 2017 in the total amount of \$366.90.

Pursuant to section 43 of the *Residential Tenancy Act*, I find that the landlord imposed a rent increase in contravention of the Regulations and therefore the tenant is entitled to recover the amount of the increase.

Accordingly, I find that the tenant has established a claim of \$366.90 for overpaid rent in 2017. Since the tenant has proven his case he is entitled to the recovery of the filing fee of \$100.00 for a total claim of \$466.90.

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$466.90. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$466.90**.

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: February 14, 2018

Residential Tenancy Branch