



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OTTMANN PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI

Introduction

This hearing dealt with a tenant's application to dispute an additional rent increase. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I confirmed service of hearing documents and evidence upon each other. I also explained the hearing process to the parties and permitted the parties to ask questions.

Issue(s) to be Decided

Is there a basis to vary or set aside an additional rent increase?

Background and Evidence

The tenancy started on November 1, 2000 on a month to month basis and at that time the monthly rent \$645.00 payable on the first day of every month. Since then there have been a number of rent increases and in 2017 the monthly rent was \$940.00.

On September 11, 2017 the manager and the tenant had a meeting. The manager discussed the landlord's options with respect to increasing rent which are: increase the rent 4% (the annual allowable amount for 2018); apply for arbitration to obtain the Director's authorization to increase the rent by an additional amount; or, reach an agreement with the tenant. The manager indicated to the tenant that if the landlord pursued arbitration the landlord would be seeking a monthly rent of \$300.00. The manager suggested to the tenant that the rent be increased by \$100.00 per month, with the tenant's consent, to avoid going to arbitration. The parties discussed the tenant's

ability to afford a rent increase. Ultimately, the parties agreed that the monthly rent would be increased by \$99.00 (or 10.63%) starting January 1, 2018; but, that there would be no rent increase in the year 2019. The tenant signed a document agreeing to these terms.

On September 19, 2017 the manager issued a Notice of Rent Increase indicating the rent was increasing by \$99.00 from \$940.00 to \$1,039.00 starting on January 1, 2018. The Notice also indicates that the last rent increase took effect November 1, 2016. The Notice of Rent Increase was served upon the tenant on or about the following day by the building manager.

On November 2, 2017 the tenant contacted the manager, via email, requesting the rent increase be reduced to 4%, indicating she felt pressured and coerced into signing the agreement on September 11, 2017. The landlord responded to the tenant, via email, indicating the legal options available to the landlord for increasing the rent were explained to the tenant during the meeting and that the parties reached an agreement after consideration of those options. The landlord declined to consider reducing the amount of the increase.

During the hearing, the tenant stated that she entered the September 11, 2017 meeting with the manager feeling nervous and tense; although, the discussion with the manager was cordial and he did not lock her in the room. Nevertheless, she felt pressured to agree to an additional rent increase as she was unaware of her rights and she considered a 10% increase being proposed to her better than facing a 30% increase if the landlord applied for arbitration. The tenant stated that the thought of going to arbitrator was a scary prospect for her. The tenant stated that the manager did not offer her the opportunity to take the paper work away from the meeting and think about the proposal. A few days after signing the agreement the tenant received a note under her door from an anonymous person accusing the landlord of trying to illegally increase the rent. The note caused the tenant to seek out further information about rent increases from the MLA office; however, the tenant acknowledged that she did not speak with an Information Officer with the Residential Tenancy Branch before making this Application for Dispute Resolution. Further, the tenant stated that the law has recently changed to prohibit landlords from increasing the rent beyond the annual allowable amount of 4%. The tenant stated that she is confused about the rent increase laws and wants confirmation as to whether the rent increase is correct or if the rent increase should be limited to 4%. The tenant has been paying rent of \$1,039.00 since January 1, 2018.

The manager testified that it was apparent to him that when the tenant entered the meeting she appeared tense so the manager proceeded to assure the tenant that the landlord's intention was not to end the tenancy but to try to close the gap between the tenant's rent obligation and market rent for the unit by way of a mutual agreement. The manager stated the landlord's options for increasing the rent were explained to the tenant and the tenant was agreeable to reaching a mutual agreement rather than face arbitration. The manager stated the tenant did not ask to take away the paperwork and think about the options proposed but if she had the manager would have allowed her to do so for a week or two, so long as her response was received before the end of September 2017. The manager acknowledged that had the landlord applied to the Director for an additional rent increase, an increase of \$300.00 would have been requested. The manager also pointed out that a similar unit recently rented for \$1,600.00 per month so the tenant's increased rent is still well below market rent.

Analysis

Part 3 of the *Residential Tenancy Act* (the Act) provides for rent increases. Section 42 and 43 are reproduced below for the parties' further reference.

Timing and notice of rent increases

- 42** (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:
- (a) 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;
 - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

- 43** (1) A landlord may impose a rent increase only up to the amount
- (a) calculated in accordance with the regulations,
 - (b) ordered by the director on an application under subsection (3), or
 - (c) agreed to by the tenant in writing.
- (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.
- (3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.
- (4) [Repealed 2006-35-66.]
- (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The tenant was served with a Notice of Rent Increase in the approved form, with at least 3 months of advance notice; and, the increase takes effect at least 12 months after the last increase took effect. Accordingly, I am satisfied the requirements of section 42 of the Act have been met.

The amount of the rent increase was the primary crux of this dispute. As provided under section 43(1) of the Act, there are three ways to determine the amount of the rent increase. As permitted under section 43(1)(c), the landlord obtained the tenant's written consent to increase the rent by \$99.00 per month and this is the amount of the increase reflected on the Notice of Rent Increase. Therefore, I find the landlord complied with section 43(1) of the Act.

The tenant pointed out that the law governing rent increases has recently changed; however, not as the tenant described. In December 2017 there was a change to the rent increase provisions found in the Residential Tenancy Regulations to eliminate a provision that would permit a landlord to seek the Director's authorization to increase the rent where the rent is significantly lower than the market rent for similar units in the same geographic area. Section 43(1) of the Act did not change in December 2017 and the determining a rent increase in one of the three ways provided under section 43(1) remain, including obtaining a tenant's written consent or a rent increase. There are also

other provisions in the Residential Tenancy Regulations that remain in effect as well. Nevertheless, when the landlord obtained the tenant's consent for a rent increase, the landlord did have the right to seek the Director's authorization for an additional rent increase where rent is significantly lower than market rent.

I recognize that the tenant referred to giving her consent for the rent increase having felt pressured and that she felt she had no other choice. Based on what I heard from both parties as to the events that took place during the meeting of September 11, 2017 I find the circumstances do not meet the definition of duress or coercion. Nor, do I find the agreement reached by the parties to be unconscionable. Therefore, I find there is no basis for me to set aside or otherwise alter the agreement the parties reached on September 11, 2017 and it remains enforceable and binding on both parties.

In summary, I find I am satisfied the landlord legally increased the rent in accordance with Part 3 of the Act and I dismiss the tenant's Application for Dispute Resolution. Accordingly, the tenant's rent obligation remains at \$1,039.00 per month and the rent may not be increased again in 2019 pursuant to the parties' agreement.

Conclusion

The tenant's Application for Dispute Resolution is dismissed.

The tenant's monthly rent obligation remains at \$1,039.00 and the rent may not be increased in 2019 pursuant to the parties' agreement.

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 23, 2018

Residential Tenancy Branch