



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, FFT

Introduction

On October 3, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a 10-Day Notice to End Tenancy, to dispute a rent increase, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Tenants attended the conference call hearing; however, the Landlord did not attend at any time during the 35-minute hearing. Tenant AC testified that she personally served the Landlord with the Notice of Hearing by hand delivering a copy to the Landlord on October 6, 2018. Tenant JP stated that he was present when the Landlord accepted the Notice of Hearing and exhibit package. I find that the Landlord has been duly served with the Notice of Hearing in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Landlord did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Tenants.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Should the 10-Day Notice to End Tenancy for Unpaid Rent, dated October 2, 2018 (the “Notice”), be cancelled, in accordance with Section 46 of the Act?

Were the Landlord’s rent increases in accordance with Part 3 of the Act and the *Residential Tenancy Regulations* (the “Regulations”)?

Should the Tenants be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Tenants provided the following undisputed testimony and evidence:

The one-year, fixed term tenancy began on August 1, 2014 and continued on as a month-to-month tenancy after one year. The monthly rent of \$1,200.00 was due on the first of each month and the Tenants paid a \$600.00 security deposit.

In May 2016, the Landlord approached the Tenants and stated that the rent was going to be increased by \$25.00 a month as of June 1, 2016. The Landlord did not give the Tenants three months notice or any written notice of the rent increase. The Tenants began paying their rent of \$1,225.00 as of June 1, 2016.

In December 2016, the Landlord approached the Tenants and stated that the rent was going to be increased by \$125.00 a month as of February 1, 2017. The Landlord did not give the Tenants any written notice of the rent increase, increased the rent within a 12-month period and increased the rent above the maximum allowable rent to \$1,350.00.

In October of 2017, the Landlord approached the Tenants and stated that the rent was going to be increased by \$150.00 a month as of November 1, 2017. The Landlord did not give the Tenants any written notice of the rent increase, increased the rent within a 12-month period and increased the rent above the maximum allowable rent to \$1,500.00.

The Tenants have been paying the rent of \$1,500.00 per month since November 2017. During the summer of 2018, the Tenants realized that the Landlord's rent increases may have been contrary to the Act and the Regulations.

The Tenants approached the Landlord about the rent increases; however, the Landlord was not interested in making any amendments. The Tenants estimated that they have paid, and the Landlord has collected, several thousand dollars in unlawful rent increases.

The Tenants acknowledged that they did not pay their rent for September 2018 or October 2018, as they believed they had the right to deduct the excess overpayments from their rent.

The Tenants received the 10-Day Notice to End Tenancy for Unpaid Rent on October 2, 2018. The Notice indicated that as of October 1, 2018, \$3,000.00 in unpaid rent was due to the Landlord. The Notice provided a vacate date of October 13, 2018. The Tenants applied for Dispute Resolution and did not pay their rent for November 2018.

Analysis

Section 42 of the Act provides guidance regarding the timing and notice of a rent increase:

(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.

Section 43 of the Act authorizes a Landlord to impose a rent increase only up to the amount that is calculated in accordance with the Regulations, ordered by the Director, or agreed to by the Tenant in writing.

I accept the Tenants' undisputed evidence that the Landlord raised the Tenants' rent on June 1, 2016; without written notice, and without the proper three months of notice. I find that the Landlord's timing of the rent increase was in accordance with Section 42 of the Act; however, I find that the Landlord breached Section 42 by failing to provide at least 3 months notice of the rent increase and to do so in writing and in the approved form. I find that the Landlord collected rent due to a rent increase that did not comply with the Act.

I accept the Tenants' undisputed evidence that the Landlord raised the Tenants' rent on February 1, 2017; without written notice, without the proper three months of notice, within a 12-month period of a previous rent increase and, above the allowable increase of 3.7%. By doing so, I find that the Landlord breached Section 42 and 43 of the Act. I find that the Landlord collected rent due to a rent increase that did not comply with the Act.

I accept the Tenants' undisputed evidence that the Landlord raised the Tenants' rent on November 1, 2017; without written notice, without the proper three months of notice, within a 12-month period of a previous rent increase and, above the allowable increase of 3.7%. By doing so, I find that the Landlord breached Section 42 and 43 of the Act. I find that the Landlord collected rent due to a rent increase that did not comply with the Act.

As the Landlord has not abided by the Act or the Regulations regarding any of the rent increases during this tenancy, I find that the Tenants' rent has not been lawfully increased from the original amount, as noted on the Tenancy Agreement, in the amount of \$1,200 a month. Therefore, I find the following:

June 2016 to January 2017, the Tenants overpaid their monthly rent by \$25.00 for 8 months for a total of \$200.00.

February 2017 to October 2017, the Tenants overpaid their monthly rent by \$150.00 for 9 months for a total of \$1,350.00.

November 2017 to August 2018, the Tenants overpaid their monthly rent by \$300.00 for 10 months for a total of \$3,000.00.

I find that the Landlord has collected \$4,550.00 in rent, based on unlawful rent increases.

The Tenants admitted that they did not pay their rent for September, October or November 2018. The Landlord served the Notice to the Tenants to end the tenancy based on their failure to pay rent. As I found that the Landlord was properly served the Notice of Hearing and has subsequently failed to attend this hearing to present the Notice and provide testimony and evidence in relation to the Notice, I cancel the Notice and the tenancy shall continue until ended in accordance with the Act.

During the hearing, the Tenants stated that they would like to stay in the rental unit and to have the tenancy continue. They applied for Dispute Resolution as they wanted their concerns to be heard and to ensure that the Landlord's intention to raise the rent were fair and in accordance with the Act.

The Tenant's acknowledged that the rent could have easily been raised in accordance with the Act and were willing to begin paying higher rent. When I calculated the allowable rent increases from June 1, 2016, I found that the Tenants would be paying a monthly rent of \$1,331.69 as of June 1, 2018. In a show of good faith, the Tenants stated that they were prepared to start paying a monthly rent of \$1,365.00.

The Tenants acknowledged that they have not paid rent for September, October or November 2018 and I find that they are in rental arrears of \$4,095.00 (3 x \$1,365.00).

Based on the above testimony, evidence and findings, I find that the Tenants have established a monetary claim in the amount of \$455.00 (Landlord's unlawful rent increases of \$4,550.00 minus Tenants' unpaid rent of \$4,095.00).

I find that the Tenants Application has merit and that they should be compensated for the cost of the filing fee in the amount of \$100.00, in accordance with Section 72 of the Act.

I find that the Tenants may deduct their total monetary claim of \$555.00, from future rent payments and as set out below, in accordance with Section 72(2) f the Act.

Conclusion

I make the following orders regarding this tenancy:

1. As of December 1, 2018, the new rent will be established at \$1,365.00 per month, due on the first of each month.
2. The rent for this tenancy cannot be increased until December 1, 2019 and only in accordance with the Act and Regulations.
3. I authorize the Tenants to deduct \$225.00 from their December 2018 rent, in accordance with Section 72(2) of the Act.
4. I authorize the Tenants to deduct \$330.00 from their January 2019 rent, in accordance with Section 72(2) of the Act.
5. Once completed, these terms will fully address the Tenants' 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: November 15, 2018

Residential Tenancy Branch