



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that the landlord was personally served the notice of dispute resolution package on November 20, 2018. I find that the landlord was deemed served with this package on November 20, 2018, in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

At the hearing the tenant testified that he is also seeking to dispute the validity of a rent increase dated October 31, 2018.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the fact that the tenant is seeking to dispute the rent increase dated October 31, 2018, should have been reasonably anticipated by the landlord as the basis of the tenant's application for an Order that the landlord comply with the *Act* is that the rent increase in question did not comply with the *Act*. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the tenant's application to include claim to dispute the October 31, 2018 rent increase from the landlord.

Issue(s) to be Decided

1. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. Is the tenant entitled to cancellation of the rent increase, pursuant to sections 42 and 43 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant provided the following undisputed testimony. This tenancy began in June 2016 and is currently ongoing. At the beginning of the tenancy rent was \$800.00 per month, payable on the first day of every month. A security deposit of \$1,000.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant provided the following undisputed testimony. In March of 2018 the landlord verbally told the tenant that he was increasing rent by \$100.00 per month, effective April 1, 2018. Effective April 1, 2018, the tenant paid rent in the amount of \$900.00 per month. The tenant is not disputing this rent increase. On November 1, 2018 the

landlord provided the tenant with a letter dated October 31, 2018 which states that rent was going to be increased a further \$200.00 per month for a total of \$1,100.00 per month effective January 1, 2019. The aforementioned letter was entered into evidence. The tenant testified that he only paid \$900.00 in rent on January 1, 2019.

The tenant testified that he does not believe the October 31, 2018 rent increase is legal and is seeking an Order for the landlord to comply with the *Act*, and to only increase his rent in accordance with the *Act*. The tenant is also seeking an Order that the rent increase dated October 31, 2018 be deemed null and void.

Analysis

Sections 42 and 43 of the *Act* state:

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.

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.

Section 22(3) of the Residential Tenancy Branch Regulations (the "Regulations") states:

22(3) For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2019, a landlord may impose a rent increase that is no greater than the amount calculated as follows:
percentage amount = inflation rate.

I find that the October 31, 2018 rent increase is of no force or effect for the following reasons:

1. The landlord issued the October 31, 2018 rent increase less than 12 months after the previous rent increase, contrary to section 42(1)(b) of the *Act*;
2. The landlord did not give the tenant at least three months notice of the proposed rent increase (the rent increase would have had to been served on the tenant on October 31, 2018, not November 1, 2018), contrary to section 42(2) of the *Act*;
3. The notice of rent increase was not in the approved form, contrary to section 42(3) of the *Act*; and
4. The October 31, 2018 rent increase was above the allowable rate established in section 22(3) of the Regulations.

Pursuant to section 62 of the *Act*, I Order the landlord to only issue notices of rent increase that comply with the *Act*.

As the tenant was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to a one time rent reduction in the amount of \$100.00.

Conclusion

I find that the notice of rent increase dated October 31, 2018 is of no force or effect.

I Order the landlord to only issue notices of rent increase that comply with the Act.

I find that the tenant is entitled to a one time rent reduction in the amount of \$100.00.

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 03, 2019

Residential Tenancy Branch