



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI FFT MNDCT

Introduction

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

- an order regarding a disputed rent increase pursuant to section 43;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to submit evidence and call witnesses.

As both parties appeared service was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution of December 11, 2018 and evidence. The landlord said they had not filed any evidence of their own. Based on the testimonies I find that the landlord was served with the tenant's application package in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should an order be made regarding a disputed rent increase?

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee for their application?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began sometime in 2012. There is no written tenancy agreement and there is very little documented regarding the details of the tenancy. The monthly rent at the start of the tenancy was \$1,000.00 payable on the first of each month. The parties agreed to increase the rent to \$1,040.00 monthly sometime in 2017. In April 2018 the parties discussed and agreed to increase the rent to a monthly amount of \$1,250.00 beginning July 2018. There was no documentation prepared by either party confirming the amount of the monthly rent.

The parties testified that the tenant paid the amount of \$1,250.00 from July 2018 through November 2018. The tenant testified that she came to believe that the amount of the monthly rent agreed to was a rent increase greater than the amount permitted under the Act. The tenant gave the landlord a note detailing her objection to the rent amount with a payment of \$1,090.00 for December 2018. The tenant subsequently paid an amount of \$1,040.00 for January 2019 rent. The landlord accepted the payments from the tenant.

The landlord said that their financial situation prevents them from allowing this tenancy to continue at the lower rent amount. The landlord testified that while they have accepted the lower amount paid by the tenant in December 2018 and January 2019 they believe they will have no choice but to end the tenancy and occupy the rental suite themselves.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

Section 43 of the Residential Tenancy Act provides that:

- (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.

The parties gave evidence that in April 2018 they negotiated and agreed to a rental increase from \$1,040.00 to \$1,250.00. The tenant agreed to the new monthly rent and made payments in that amount from July 2018 onwards. The central point of the tenant's submission is that the rent increase amount was not calculated in accordance with the regulations.

While I accept the evidence that the increase of \$210.00 is higher than the amount allowed in the regulations, I find that the parties agreed to this new monthly rent. The evidence provided is that the tenant agreed to the new amount and made regular payments accordingly. The parties submitted correspondence where the amount of the rental increase was discussed, negotiated and confirmed.

I find that this rental increase did not contravene the *Act*. The *Act* provides three separate manners by which a rent increase may be imposed. A proposed rent increase does not need to meet all three requirements under the *Act*. In the matter at hand while the rent increase was not calculated in accordance with the regulations, it was agreed to by the tenant in their correspondence with the landlord. Therefore, I find that the increase of \$210.00 was done in accordance with the *Act*.

As there has been no violation of the Act, regulations or tenancy agreement by the landlord, I find that the tenant has not met their evidentiary burden for a monetary claim. Consequently, I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply.

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 28, 2019

Residential Tenancy Branch