Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes DRI, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 30, 2018, in which the Tenant disputed a rent increase and sought to recover the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on January 14, 2019.

The Tenant appeared on his own behalf. The Managing Director of the company noted as Landlord on the Tenant's Application, J.H., called in on behalf of the Landlord. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Notice of Rent Increase issued on November 15, 2018 valid?

2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began September 1, 2015. The tenancy agreement provided in evidence confirmed that at the start of the tenancy the rent was $850.00 per month.

Pursuant to clause 11 of the tenancy agreement, the parties agreed the Landlord could raise the rent as follows:

11. RENT INCREAESES. Once a year the landlord may increase the rent for the existing tenant. The landlord may only increase the rent 12 months after the date that the existing rent was established with the tenant or 12 months after the date of the last legal rent increase for the tenant, even if there is a new landlord or a new tenant by the way of an assignment . The landlord must use the approved Notice of Rent increase form available from any Residential Tenancy office or Government Agent. The landlord must give the tenant 3 whole months before the increase begins. For example, if the rent is due on the 1st of the month and the tenant is give notice any time in January, including January 1st, there must be 3 whole months before the increase begins. In this example, the months are February, March and April, so the increase would begin on May 1st. The landlord may increase the rent only in the amount set out by the Regulation. If the tenant thinks the rent increase is more than is allowed by the Regulation, the tenant may talk to the landlord or contact the Residential Tenancy office for assistance. Either the landlord or the tenant may obtain the percentage amount prescribed for a rent increase from the Residential Tenancy office.

The Tenant confirmed that at the time the tenancy began he was an employee of the Landlord as a building manager. In December of 2016 he stopped working directly for the Landlord as he began working for a company called A.H. who were in turn contracted to care for the building.

The Tenant stated that in December of 2016, when he stopped working directly for the Landlord, his rent increased from $850.00 to $950.00. He was then paid a salary from A.H. for his services as a building manager.

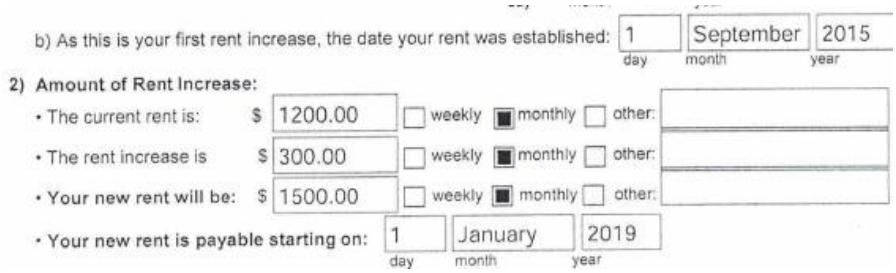
The Tenant stated that on August 1, 2018 the Landlord stopped contracting with A.H. such that the Tenant's services were no longer needed at which time the Landlord increased his rent from $950.00 to $1,200.00.

Introduced in evidence was a copy of an Independent Contractor Agreement between the Landlord and A.H. which provided in part as follows:

- The contractor will not reside in any of the properties with the exception of [Tenant] who will live in S.C. Apartments at a rent of $950.00 per month which [the Tenant] will pay to the Company according to the existing *Residential Tenancy Agreement.* If [the Tenant] no longer works for the Contractor or stops managing S.C. Apartments according to this Contract, his rent will, on the earlier of either event, revert to market rent of $1,350.00 per month. He will, if the Company notifies him, vacate the apartment;

The Tenant confirmed that he did not dispute the rent increase from $950.00 to $1,200.00 as he understood it was raised due to the fact he was no longer employed as the building manager at the time of the rent increase.

The Tenant submitted that the reason for his Application for Dispute Resolution was because he disputed the rent increase from $1,200.00 to $1,500.00. Introduced in evidence was a copy of the Notice of Rent Increase, issued on November 15, 2018, which provided as follows:



b) As this is your first rent increase, the date your rent was established: 1 (day) September (month) 2015 (year)

2) Amount of Rent Increase:

- The current rent is: $ 1200.00 ☐ weekly ■ monthly ☐ other:
- The rent increase is $ 300.00 ☐ weekly ■ monthly ☐ other:
- Your new rent will be: $ 1500.00 ☐ weekly ■ monthly ☐ other:
- Your new rent is payable starting on: 1 (day) January (month) 2019 (year)

The Tenant submitted that the allowable rent increase was 2.5% pursuant to the *Residential Tenancy Regulations*, which would be $30.00 per month, not $300.00.

The Landlord's representative, J.H., testified as follows.

J.H. submitted that the parties had contracted out of the *Residential Tenancy Act* such that the rent increase of $300.00 was allowable.

J.H. confirmed that the Tenant's rent went from $950.00 to $1,200.00 in August of 2018.

J.H. stated that A.H. is the Tenant's father's company. J.H. stated that his father asked that they switch from an employment arrangement to a contractor arrangement for tax purposes so they could get write offs.

J.H. further stated that when the Tenant was late with his rent 14 times and was "wholly incompetent" he fired the Tenant.

Notably, the Tenant did not dispute that he was no longer employed by the Landlord, nor did he take issue with his termination.

When I reminded J.H. to only provide evidence with respect to matters which were relevant to the *disputed issues* before me, J.H. became audibly upset, raised his voice and informed me that he had been a lawyer for 30 years, had appeared at every level of

court in Canada, and had never been treated with such “contempt”. His outburst was unexpected, and an overreaction to my request that he focus his testimony and submissions.

When I asked J.H. how it was that he could fire the Tenant, when the contractual arrangement was with A.H., J.H. stated that he terminated the contract with A.H. as it related to the subject rental property and therefore terminated their dealings with the Tenant.

J.H. confirmed that at that time the contract was terminated, the Tenant’s rent was raised from $950.00 to $1,200.00.

J.H. then stated that the reason the rent went from $950.00 to $1,200.00 was because the interactions with A.H. and the Tenant “was good” at the time. J.H. stated that because A.H. was still managing two other properties, and the Tenant was without a job, J.H. agreed to only raise the rent to $1,200.00 for six months to “soften the blow” of the Tenant losing his job. J.H. confirmed that the Tenant was not involved in this conversation. J.H. also confirmed that he didn’t reduce that discussion/alleged agreement to writing, which he admitted “as a lawyer he knew he should have”.

J.H. stated that he then went away on a lengthy trip and when he got back he asked the Tenant what he thought was a fair amount of rent.

J.H. further claimed that the Tenant had the best rental unit in the building, which he normally would not give to the manager, but that happened to be what was available at the time the Tenant was working for them.

J.H. claimed that at the time the Tenant stopped working for them, he gave the Tenant “a break” of $300.00 per month as he believed the unit should rent out at $1,500.00 per month.

J.H. referenced an email in the Landlord’s evidence package, wherein he wrote to the Tenant that his rent has to go up to “market”. In that email J.H. wrote that he had given the Tenant a period of rent below market value as a “gesture of good will” and that he believed the rental unit should rent for at least $1,500.00.

The Landlord also submitted a copy of an email from the Tenant to his father (which was originally in Romanian and then translated to English) and which had been unintentionally sent by the Tenant to the Landlord. J.H. submitted that the Tenant’s

communications confirm his agreement with the rent increases. In this email, the Tenant writes in part as follows:

> *"He said six months is 1200. Eh now he wants it on December 1st. He changed Randuiala. I'll think about it and say nothing today. First of July, I found out he was kicking me out. August 1 I started paying 1200. He changed Ranuiala. Now he wants 1500 two months earlier…Lied to me again. First you said six months now it's four."*

J.H. submitted that the Tenant is estopped from relying on the strict terms of the tenancy agreement by virtue of "Proprietary estoppel" for the following reasons:

- The Landlord only charged $1,200.00 which was not market rent at the time and evidence that the Tenant was given a deal.
- The Tenant paid reduced rent for many years and should not be able to go back on his part of the deal and rely on the strict terms of the agreement.
- It is entirely inappropriate for the Tenant to use the benefit of the tax write offs, the reduced rent, and the six month "grace period" and then not pay as required such that he is using the *Act* as a sword.

In reply the Tenant confirmed that he did not agree to a grace period of 4-6 months after which his rent would be increased by another $300.00.

The Tenant further confirmed that when his employment came to an end at the end of July 2018, the Landlord did not ask him to enter into a new tenancy agreement.

The Tenant stated that when he stopped working as a building manager, he was not contacted in writing by the Landlord regarding this alleged agreement with the Tenant's father. In addition, the Tenant stated that the Landlord did not know his financial situation, nor did the Landlord talk to him about this.

The Tenant submitted that the Landlord should have talked to him personally as he continued as a Tenant. He further noted that when the Landlord ended the contract with D.H., his father, and D.H. were no longer involved with his rental such that they could not enter into agreements on his behalf.

The Tenant also noted that he was given the Notice of Rent Increase on November 15, 2018 purporting to raise his rent by $300.00 as of January 1, 2019, only 1.5 months later.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find as follows.

I find that the Landlord and the Tenant entered into a binding tenancy agreement on September 1, 2015.

I further find that at the time the tenancy began, the Tenant was employed as a building manager for the Landlord. At that time the Tenant was obligated to pay $850.00 in rent.

Clause 11 of the tenancy agreement specifies what rent increases are permitted. This clause is consistent with Part 3 of the *Residential Tenancy Act* and Part 4 of the *Residential Tenancy Regulation* which govern rent increases.

When the Tenant ceased being employed directly by the Landlord, his rent increased to $950.00 per month. Whether this increase was permitted under the *Act* or the *Regulations* is irrelevant as the Tenant does not dispute this amount.

Similarly, the Tenant does not dispute that when his father's company, A.H., ceased its contractual relationship with the Landlord, his rent increased to $1,200.00. Again, whether this increase was permitted under the *Act* or the *Regulations* is irrelevant as the Tenant does not dispute this amount.

The Landlord's representative submits that he then entered into an oral agreement with the Tenant's father that the $1,200.00 rent would be for a six month grace period after which his rent would increase to $1,500.00. He admits the Tenant was not involved in these discussions, nor was the agreement reduced to writing.

The Tenant denies entering into any agreement regarding an alleged six month grace period.

The Landlord's representative submits that the email communication between the Tenant and his father is evidence the Tenant agreed to the six month grace period. I disagree. The email, at best, indicates the Tenant's frustration and disagreement with the Landlord's proposed rent increase. While the Tenant references four months and six months in this email, I do not find this to be an admission that he agreed to any such grace period, rather I find it more likely this confirms he was confused as to the Landlord's request for additional rent.

As noted, the tenancy agreement is between the Landlord and the Tenant. It is a contract between the Tenant and the Landlord. The Tenant's father is not a party to that agreement; as such, the Tenant's father was not able to bind the Tenant, even in the event he had entered into an oral agreement with the Landlord as to the alleged "six month grace period". Had such discussions occurred, the Tenant should have been involved.

The contract between A.H. and the Landlord contemplated the Tenant's rent increasing when he no longer provided property management services. The evidence confirms that on August 1, 2018 the Landlord stopped contracting with A.H. such that the Tenant's services were no longer needed. The evidence further confirms that the Tenant's rent was increased from $950.00 to $1,200.00 at that time. Again, the Tenant does not dispute this rent increase.

I find that the Tenant agreed to the $1,200.00 rent effective August 1, 2018, and as such I find this rent increase is permitted pursuant to section 43(1)(c) of the *Act.* I find the Tenant's rent is $1,200.00.

I find the Tenant did not agree to a grace period whereby his rent would increase over the $1,200.00 amount at some time in the future, whether it be four months later, six months later, or some other period of time. I therefore find that the principle of estoppel does not apply as the Tenant is not resiling from any previous agreement, as I find no such agreement was reached.

Section 41 provides that rent shall not be increased except in accordance with Part 3 of the *Act.* The Notice of Rent Increase served on the Tenant purports to raise the rent by $300.00, which is well over the allowable amount pursuant to the *Regulations* and is therefore not permitted.

Similarly, the Notice of Rent Increase does not afford the Tenant the three months' notice required by section 42(2) and is not permitted on this basis as well.

I therefore find the Notice of Rent Increase unenforceable.

The Tenant's rent is $1,200.00 effective August 1, 2018. The Landlord may increase his rent in accordance with Part 3 of the *Act* and Part 4 of the *Regulations,* such increase not to occur before July 31, 2018 as provided for in section 42(1)(b).

In the event the Tenant has paid rent over and above the permitted $1,200.00, the Tenant may, pursuant to section 43(5) of the *Act* reduce his next month's rent accordingly.

Having been substantially successful in his application, the Tenant is permitted, pursuant to section 72 of the *Act,* to recover the $100.00 filing fee by further reducing his next month's rent by $100.00.

Conclusion

The Tenant's Application is granted. The Notice of Rent Increase dated November 15, 2018 is of no force and effect.

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 13, 2019

Residential Tenancy Branch