



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDCT, OLC

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to dispute having to pay a higher internet charge that is greater than what other tenants are paying, for a monetary claim of \$150.00 for the cost of hearing and time associated with the application, and for an order directing the landlord to comply with the *Act*.

The tenant and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As both parties confirmed having been served with the application and documentary evidence, I find the parties were sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matters

Although the tenant indicated did not originally specifically state they were seeking to dispute a rent increase, I find the details of dispute are clearly enough related to include a dispute of a rent increase for the following reasons. Firstly, the application and testimony of the parties support that the internet amount was increased contrary to the *Act* as the tenant also applied for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement. Secondly, in the documents submitted by the parties, and based on the testimony provided, the landlord included internet and other non-rent fees in calculating the rent increase in the Notice of Rent Increase document dated September 17, 2017 ("Notice of Rent Increase"). Based on the above, and pursuant to section 64(3) of the *Act* I find the landlord would have known, or ought to have known that this application included a rental increase dispute as related to the internet fee(s)

and I amend the tenant's application accordingly to include the code DRI, which refers to a dispute of a rent increase under the *Act*.

In addition, the parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Did the landlord impose an additional rent increase in accordance with the *Act*?
- If yes, what should the monthly rent be under the *Act*?
- Is the tenant paying the correct amount for their internet service?
- Is the tenant entitled to the \$150.00 monetary order as claimed?
- Should the landlord be directed to comply with the *Act*, regulation or tenancy agreement under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on June 1, 2014 and lists the monthly rent as \$525.00. In addition to the monthly rent, the tenant signed on the tenancy agreement that the tenant is responsible for \$110.00 per month in power consumption/utilities.

The tenant confirmed that she also wrote the amounts of \$15.00 for garbage and \$30.00 for internet, so there was no dispute before me that the tenant was paying \$15.00 for garbage and \$30.00 for internet up until July 1, 2019. Of importance is that there is no signed tenancy agreement or addendum to the tenant agreement to reflect that the tenant would pay for the following:

1. Water and sewage fee of \$20.00
2. Recycling room fee of \$5.00
3. Emergency taxi service fee of \$5.00

Regarding the above 3 fees, which I will refer to as "extra fees" for the remainder of this decision, while the landlord claims the tenant verbally agreed to pay those extra fees, the tenant vehemently denies that such a verbal agreement was made.

Regarding the internet fees, there is no dispute that the tenant was advised in writing on June 14, 2019, that due to changes to fiber optic internet service upgrades, that the

current slower internet service for \$30.00 would be ending as of July 1, 2019 and the two options to the tenant were to agree to the new internet amount of \$40.00, which included a substantial speed increase from 8MBPS to 50+MBPS, and would also include unlimited data storage, or the tenant would pay \$30.00 less per month and have their internet disconnected. The tenant confirmed during the hearing that they agreed to the \$40.00 amount for the upgraded internet service.

At issue for the tenant, is that the landlord included the \$30.00 amount of the monthly internet on the Notice of Rent Increase, which states that monthly rent had not been increased since the start of the tenancy on June 1, 2014, that a monthly rent amount of \$680.00 was being increased by \$27.00 to \$707.00, effective January 1, 2018, which is an increase of nearly 4%. When the landlord was asked how they arrived at the monthly rent amount of \$680.00, when the tenancy agreement stated \$525.00, the landlord stated that the amount of \$680.00, included the following:

- A. \$525.00 rent
- B. \$110.00 power consumption/utilities
- C. \$30.00 internet
- D. \$20.00 water and sewer fee
- E. \$15.00 for dumpster fee (garbage)
- F. \$5.00 for recycling room fee
- G. \$5.00 for emergency taxi fee

I find; however, that A to G listed above, total \$710.00. The landlord was unable to provide any supporting documentary evidence to support that the tenant agreed in writing to items D, F and G (extra fees).

The tenant has also applied for compensation in the amount of \$150.00 comprised of the filing fee, which was waived, and for taxi costs, photocopying costs and mail costs. These costs will be addressed later in this decision.

Analysis

Based on the oral testimony and documentary evidence before me, and on a balance of probabilities, I find the following.

Firstly, I find that a disputed verbal agreement is not enforceable under the *Act*. In addition, section 43 of the *Act* applies and states:

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.

[Emphasis added]

The allowable rent increase for residential units for 2018 was 4.0%. This does not apply to extra fees such as utilities, garbage and internet fees, which I find in the matter before me were not part of the monthly rent based on the written tenancy agreement which listed the monthly rent as \$525.00. Based on the above, I find the landlord breached section 43 of the *Act* by serving an invalid Notice of Rent Increase on the tenant. I have reached this finding by taking into account that the landlord incorrectly applied a nearly 4% increase to not only the rent, but also to the \$110.00 power consumption/utilities, \$30.00 internet, \$20.00 water and sewage fee, \$15.00 garbage fee, \$5.00 recycling room fee, and \$5.00 emergency taxi fee. Therefore, I find the Notice of Rent Increase is invalid and of no force or effect pursuant to section 62(3) of the *Act*.

Given the above, as September 2019 rent has already been paid by the tenant, and pursuant to section 62(3) of the *Act*, I find that effective October 1, 2019, monthly rent remains \$525.00, and that the tenant has agreed to pay an additional \$165.00 in monthly fees to the landlord in addition to the monthly rent as follows:

1. \$110.00 power consumption fee
2. \$40.00 internet
3. \$15.00 garbage

To clarify, in addition to the \$525.00 monthly rent, I find the tenant has agreed to pay extra fees of \$165.00 comprised of power consumption/utilities, internet and garbage fees, which total \$690.00 per month.

Regarding the \$150.00 monetary claim by the tenant, I dismiss the \$100.00 filing fee without leave to reapply, as the tenant had the filing fee waived and is not entitled to a filing fee that was waived. Furthermore, I dismiss the tenant's claim for taxi costs,

photocopying costs and mail costs as I find that those are costs associated with filing their application for dispute resolution and not recoverable under the *Act*.

Conclusion

I find the tenant's claim is partially successful.

I find Notice of Rent Increase served by the landlord breached section 43 of the *Act*. I order that the tenant's rent remains at \$525.00 per month, plus the \$165.00 in extra fees described above as of October 1, 2019.

The landlord is cautioned only to increase rent in accordance with section 43 of the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: September 20, 2019

Residential Tenancy Branch