



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: DRI, FF

Introduction

This hearing dealt with an application by the tenant to dispute a rent increase effective December 01, 2019 and to recover the filing fee.

I accept the evidence of the tenant that the landlord was served with notice of this application and hearing by registered mail on September 25, 2019. The tenant filed a copy of the tracking information. The tenant also filed a copy of his email to the landlord informing her that there was a package waiting for pickup. The landlord responded by email saying that she had not received it.

Residential Tenancy Policy Guideline No. 12 provides that, where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Based on the tenant's evidence and pursuant to section 89 and 90 of the *Act*, I find that the landlord has been deemed served with the tenant's dispute resolution hearing package on September 30, 2019, 5 days after the mailing of the package. The landlord not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issue to be Decided

Is the rent increase in keeping with Legislation? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began in July 2014. The monthly rent was \$1,400.00. The tenant testified that at the start of tenancy, he requested the landlord to reduce the rent and she informed him that she would do so at a later date. Six months into the tenancy at the tenant's request landlord agreed to lower the rent to \$1,350.00.

In August of 2016, the landlord raised the rent as per the legislated rate of increase but based it on the rental amount of \$1,400.00. The tenant notified the landlord of the discrepancy and she amended the increase to base it on a rental amount of \$1,350.00. This went on for the yearly rent increases in 2017 and 2018. Both times the landlord used \$1,400.00 as the initial rent but corrected it when the tenant brought it to her attention. Starting December 01, 2018 the tenant has been paying a rent of \$1,498.50.

On August 27, 2019, the landlord served the tenant with a rent increase which would become effective on December 01, 2019. The increase was calculated in accordance with the regulation at the rate of 2.5%. However, the landlord calculated the increase on a base amount of \$1,553.00 which would take the new rent payable on December 01, 2019 to \$1,591.92.

The tenant raised an objection to the amount of the new rent and explained to the landlord that she must base the increase of 2.5% on the current rent that he pays which is \$1,498.50. The landlord informed the tenant that the initial \$50.00 discount of rent was temporary and was not in effect anymore. The parties could not resolve the dispute and on September 11, 2019, the tenant made application for dispute resolution.

Analysis

Sections 42 and 43 address the timing and notice of rent increases and amount of rent increase permitted by legislation.

Timing and notice of rent increases

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 established under the tenancy agreement;
- (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.

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.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

Based on the testimony and documents filed into evidence by the parties, I find that on August 27, 2019, the landlord served the tenant with a rent increase that complied with the legislated rent increase rate of 2.5%. The landlord gave the tenant the full three months notice before the rent increase became effective.

However, the landlord and tenant did not agree on the base amount of the rent that was used by the landlord, to calculate the new rent payable on December 01, 2019. The tenant testified that the landlord informed him that the \$50.00 discount on rent was temporary and was no longer in effect. I must now determine whether the base rent is \$1,498.50 or \$1,553.00 as used by the landlord in her calculation of the rent increase.

Based on the undisputed testimony of the tenant, I find that the landlord granted the tenant a \$50.00 rent deduction in December 2014. This reduced rent continued to be in effect and was used to calculate rent increases every year since then.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the landlord's failure to restore the rent to the original amount of \$1,400.00 in a timely fashion, or shortly after each of the subsequent rent increases came into effect, pursuant to the doctrine of laches, I find that the base rent on which the current increase must be calculated is the current rent paid by the tenant (\$1,498.50).

Accordingly, the new rent which will come into effect on December 01, 2019 will be \$1,535.96.

Since the tenant is successful in his application, I grant him the recovery of the filing fee of \$100.00. The tenant may make a one-time deduction of \$100.00 from a future rent.

Conclusion

Effective December 01, 2019 the monthly rent will be \$1,535.96, due on the first of each month.

The tenant may make a one-time deduction of \$100.00 from a future rent.

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 27, 2019

Residential Tenancy Branch