



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI FFT OLC PSF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants disputing a rent increase and seeking an order that the landlord comply with the *Act*, regulation or tenancy agreement; an order that the landlord provide services or facilities required by the tenancy agreement or the law; and to recover the filing fee from the landlord for the cost of the application.

One of the tenants attended the hearing, gave affirmed testimony and represented the other tenant. The landlord also attended and gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established an illegal rent increase?
- Have the tenants established that the landlord should be ordered to comply with the *Residential Tenancy Act* or the tenancy agreement?
- Have the tenants established that the landlord should be ordered to provide services or facilities required by the tenancy agreement or the law?

Background and Evidence

The tenant testified that this month-to-month tenancy began on December 1, 2015 and the tenants still reside in the rental unit, which is one of 3 basement suites in the landlord's home, and the landlord resides in the upper level. Originally rent in the

amount of \$650.00 per month was payable on the 1st day of each month. The landlord collected a security deposit from the tenants in the amount of \$325.00 at the outset of the tenancy which is still held in trust by the landlord, and no other deposits were collected. A copy of the tenancy agreement has been provided as evidence for this hearing.

In 2017 the landlord gave each of the tenants in the basement suites a Two Month Notice to End Tenancy for Landlord's Use of Property because his family members were moving into those suites. All tenants disputed the notices. The tenant didn't attend a hearing, nor did the landlord because the landlord told the tenant that if the tenant paid another \$100.00 per month the tenant could stay. The tenant started paying \$750.00 per month on August 1, 2017 and the tenants have provided copies of receipts showing the original amount paid in July, 2017 and the increased amount on August 1, 2017. The tenant did not agree to the increase in writing and the landlord did not serve a Notice of Rent Increase. The tenant testified that he paid it because it was obviously the reason for issuing the notice to end the tenancy.

At that time, the landlord's wife was dealing with the tenancy, and the tenant asked for something in writing to ensure that the tenants would not get kicked out, but she refused to put anything in writing.

The landlord asked for more money stating that it was lower than market rent and the landlord could get \$1,000.00 per month easily. The landlord agreed to give the tenants more space for storage for a cost of \$25.00 per month bringing the rent now to \$775.00 effective October 1, 2017. Receipts have been provided which are dated and contain a notation of what the payments are for, being rent for the month.

The landlord also stated that he was going to sell and told the tenant that he had to move all of his belongings from the storage space so the landlord could paint. An argument commenced wherein the landlord said the \$25.00 increase was not for storage, but a good will gesture and there's nothing in writing. The tenant took his luggage out of the storage space and filed this dispute. Copies of text messages exchanged between the parties have also been provided for this hearing.

After the tenant filed this dispute the landlord served another Two Month Notice to End Tenancy for Landlord's Use of Property and a copy has been provided for this hearing. It is dated October 30, 2019 and contains an effective date of vacancy of December 31, 2019. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)."

The tenants did not dispute the Notice and intend to move out of the rental unit at the end of December, 2019 in accordance with that Notice, and did not pay rent for December as compensation required by law. The tenants simply want the illegal rent increase returned to the tenants.

The landlord testified that the increase in rent was on the tenant's own accord and not in writing. The landlord told the tenant that the rent was lower than market value and the landlord would appreciate a voluntary increase in rent.

The landlord further testified that his son and family were going to move into the rental units and needed 4 extra bedrooms. The move was postponed.

None of the other tenants could find a place to live and the landlord has a conscience and did not want to put them on the street, and all tenants remained. Rent was not increased for anyone. One of the other tenants pays \$1,140.00 per month and another moved out and was replaced with a new tenant about a year ago and pays \$1,400.00 per month. They are bigger units.

The landlord also testified that once the tenants paid the increase, the rental amount doesn't go back to the original amount; the new rent applies, not the old amount.

Analysis

The *Residential Tenancy Act* specifies how rent is increased:

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

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 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.

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.

(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.

In this case, there is no dispute that rent was increased twice without the landlord giving a Notice of Rent Increase. The landlord's position is that the tenant paid the increases out of goodwill, and once the tenant increased the rent, the tenant can't go back to the original amount. However the tenant testified that the first increase was after the landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property. The landlord did not dispute that testimony, testifying that the circumstances of his son's family changed and his move into the rental units was postponed. The tenant also testified that the landlord's wife was dealing with the tenancy and refused to give the tenants anything in writing to prevent being served with another notice to end the tenancy once rent was increased. At that point, rather than refuse, the landlord ought to have created a new fixed term tenancy agreement for the increased amount of rent. The landlord did not give anything in writing and refused to give the tenants anything in writing to prevent the landlord from ending the tenancy. Further, the tenant did not give the landlord anything in writing to agree to increase the rent.

I have reviewed the evidentiary material, particularly the rental receipts signed by the landlord. I find that the tenants have established that rent was increased contrary to the

law and I find that the tenants paid \$100.00 more per month than permitted under the *Act* for the months of August, 2017 to December, 2019, being \$2,800.00.

The tenant testified that the rent was increased again in exchange for extra storage space. I do not see that as being contrary to the law, given that the tenant agreed to the exchange and suffered no loss.

Since the tenancy is ending, I decline to order that the landlord provide services or facilities required by the tenancy agreement or the law, or that the landlord comply with the *Act*, regulation or tenancy agreement, and I dismiss those applications with leave to reapply.

Since the tenants have been partially successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,900.00.

This order is final and binding and may be enforced.

The balance of the tenants' application is hereby dismissed with 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: December 12, 2019

Residential Tenancy Branch