



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on February 21, 2020. The Tenants applied for monetary compensation due to a rent increase which they are disputing, pursuant to the *Residential Tenancy Act* (the "Act"):

The Landlord and the Tenants all attended the hearing. The Landlord confirmed receipt of the Tenant's application and evidence. The Tenants confirmed receipt of the Landlord's evidence.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to compensation due to illegal rent increases?

Background and Evidence

Both parties agree that the tenant, L.B., moved into the upper unit of this rental house as of October 1, 2007. A copy of the tenancy agreement was provided into evidence, and it shows L.B. as the only tenant, with monthly rent in the amount of \$875.00. The parties also agree that the second tenant on this application, D.L., moved in with L.B.

around March 2009. Both D.L. and L.B. still reside in the unit, but are now moving out after getting a 2-Month Notice to End Tenancy for Landlord's Use in the fall of 2019.

The Tenants are seeking \$7,579.35 in compensation to recover the amount they paid for the "illegal rent increases" starting in 2016. There are 3 rent increases the Tenants are taking issue with.

The Tenants stated that the first rent increase they received was effective February 1, 2016, when the Landlord verbally raised their rent from \$875.00 to \$1,000.00. The Tenants stated that the Landlord attended their rental unit to pick up the monthly rent cheque, and had a discussion with them about increasing the rent at that time. The Tenants stated they agreed to the rent increase because they did not want to jeopardize their tenancy. The Tenants stated that they were aware the rent increases were above the allowable amount but they "verbally agreed" to the rent being raised on all of the occasions (February 2016, May 2017, and March 2019) because they did not want to create any tension.

The Tenants second rent increase was on May 1, 2017, when rent was again verbally increased from \$1,000.00 to \$1,100.00. The Tenants stated that the third rent increase was on March 1, 2019, when rent was verbally increased from \$1,100.00 to \$1,175.00.

The Tenants stated that since the rent increases were not in writing, not given 3 months in advance, and because they were for more than the allowable annual amount, they are illegal. The Tenants stated that since they are now having to look for a new rental unit, they should be allowed to get their rent overpayments back.

The Landlord stated that they have always had good rapport with the Tenants until they issued a 2-Month Notice to them in the fall of 2019. The Landlord stated that at that point, the Tenants filed for dispute resolution for the notice, as well as for the illegal rent increases over the years. The issue regarding the rent increases was dismissed with leave from the hearing in the fall of 2019, and is the subject of today's hearing. The Landlord stated that not once did the Tenants complain or take issue with the rent increases over the years, and he feels it is unfair for the Tenants to turn around after all this time and ask for their money back.

The Landlord explained that they never demanded a rent increase in the manner the Tenants have asserted. The Landlord explained that the Tenant lived in the rental unit for around 8-9 years with no rent increase, from 2007 – 2016. The Landlord stated that after this prolonged period with no rent increases, he approached the Tenants, verbally,

and had a conversation about what a reasonable rent increase ought to be. The Landlord acknowledged that they didn't ever do this in writing, or with 3 months notice, but they stated it was only ever done with the Tenant's agreement after a discussion. The Landlord stated that each of the 3 rent increases were a proposal from them, which was accepted and agreed to by the Tenants each time.

The Landlord stated that had they purely been interested in maximizing profits, they would have increased rent annually from 2007 onwards, which would have cost the Tenants around \$17,000 more. However, the Landlord stated that they instead chose to wait as long as possible to raise the rent, then have a conversation so that the Tenants would be on the same page, and understand the increase. The Landlord stated that if they were notified by the Tenants that they were not okay with the nature of the rent increases, they would have issued them in writing, at regular intervals, but it is not fair for them to go back after all these years and deny that they agreed to the increases.

Analysis

Part 3 of the Act and Policy Guideline 37 to the Act explains the requirements a landlord must follow in order to affect a legal rent increase.

The Act requires a landlord to give to a tenant a notice of rent increase in the approved form at least three months before the effective date of the increase. The Act also requires that a landlord must not impose a rent increase that is more than the allowable limit which is calculated in accordance with the regulations, unless ordered by the director or agreed to by the Tenant in writing.

I note that *Residential Tenancy Policy Guideline 37 - Rent Increases* provides that "payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount".

In this application, the Tenants are seeking to recover money they paid, over and above their base rent, as they stated that the increases they received over the years were not effected in accordance with the Act, and were "illegal." The Tenants noted that the rent increases in February 2016, May 2017, and March 2019 were all verbal, not on the approved form, above the allowable amount, and without at least 3 months advance notice.

I note the Tenants specifically stated in the hearing that they were aware all 3 of the rent increases were above the allowable annual increases, but that they “agreed” to pay them, verbally. The Tenants are relying on the fact that they were not done in accordance with the Act as a basis to recover these “overpayments”.

I accept that the rent was not raised on these 3 occasions using the approved form, with proper notice, and within the annual increase limits. However, I also note that the Landlord did not raise the rent for around 9 years, until February 2016. It appears that at this time, the parties had verbal discussions regarding increasing rent to reflect the Landlord’s increasing costs and market conditions. I accept that the Landlord delayed the rent increases as long as practicable, but that eventually he had to approach the Tenants about raising the rent. The Tenants explicitly stated that they agreed to the increases, verbally, and I find that they communicated this agreement to the Landlord prior to each of the increases. Despite being aware that the rent increases were above the allowable amount the Tenants did not apply to dispute the rent increases until the relationship became strained due to issues surrounding a 2-Month Notice. There is no evidence that the Tenants communicated to the Landlord that any of the 3 rent increases were improper or unacceptable.

It appears the Landlord operated under the assumption that the rent increases were mutually agreed upon, and I find this assumption was reasonable, given the totality of the situation (lack regular annual rent increases, conduct of the parties prior to the 2-Month Notice in the fall of 2019). I accept that had the Landlord known the Tenants took issue with how the rent increases were given, he would have done them annually, on the approved form, in the approved amount. I also accept that, had the Landlord done this all along from the start of the tenancy, the Tenants would have ended up paying many thousands of dollars more in rent than they did.

Estoppel by Convention

Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly.

I find it important to note a Supreme Court of Canada decision, *Ryan v. Moore*, 2005 2 S.C.R. 53. Below is a relevant excerpt:

59 After having reviewed the jurisprudence in the United Kingdom and Canada as well as academic comments on the subject, I am of the view that the following criteria form the basis of the doctrine of estoppel by convention:

- (1) The parties' dealings must have been based on a shared assumption of fact or law: estoppel requires manifest representation by statement or conduct creating a mutual assumption. Nevertheless, estoppel can arise out of silence (impliedly).*
- (2) A party must have conducted itself, i.e. acted, in reliance on such shared assumption, its actions resulting in a change of its legal position.*
- (3) It must also be unjust or unfair to allow one of the parties to resile or depart from the common assumption. The party seeking to establish estoppel therefore has to prove that detriment will be suffered if the other party is allowed to resile from the assumption since there has been a change from the presumed position.*

Based on the above, I find as follows:

- (1) The Tenants verbally agreed to the rental increases in 2016, 2017, and 2019, and did not raise the issue with the Landlord or file to dispute the increase with our office. I find this created a mutual assumption which the Landlord relied upon.
- (2) The Landlord relied on this shared assumption, and did not pursue annual rent increases each year.
- (3) I find it would be both unjust and unfair for the Tenants to depart from this mutual assumption as the Landlord relied upon it to not pursue regular annual increases. Ultimately, had the Landlord pursued annual rent increases since the start of the tenancy, the Tenants would have had to pay more rent than they did.

I therefore find the Tenants are estopped from claiming compensation for the “illegal rent increases” in 2016, 2017, and 2019. The Tenants’ application is dismissed, in full, without leave.

Conclusion

The Tenants application is dismissed.

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 21, 2020

Residential Tenancy Branch