



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FFT

Introduction

On August 18, 2020, the Tenant made an Application for Dispute Resolution seeking to dispute a rent increase pursuant to Section 41 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with K.W. attending as his advocate. The Landlord did not make an appearance at any time during the 27-minute hearing. All parties in attendance provided a solemn affirmation.

K.W. advised that the Tenant did not have a service address for the Landlord, so the Notice of Hearing package was served to the Landlord’s address that they found on a Land Title Search. This was served by registered mail on August 21, 2020 (the registered mail tracking number is noted on the first page of this Decision). She stated that this package was unclaimed; however, the Tenant was served with a One Month Notice to End Tenancy for Cause (the “Notice”) dated August 18, 2020 with the Landlord’s address on it. She advised that the Notice of Hearing package was sent to this address by registered mail on September 2, 2020. Based on this solemnly affirmed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was deemed to have received the Tenant’s Notice of Hearing package five days after it was mailed to the Landlord’s address on the Land Title Search.

She also advised that the Tenant’s evidence was served to the Landlord’s address on the Notice by regular mail “about one to two weeks ago.” As this evidence was not served to the Landlord in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, this evidence is considered late. As a result, this evidence will be excluded and not considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Was a rent increase implemented contrary to the *Act*?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started as an unwritten tenancy with the Landlord's father sometime in 2002. At that time, the rent was \$800.00 per month and was due on the first day of each month. In 2008, the father passed away and the Landlord took over managing the rental unit in 2010. He informed the Tenant that he needed to raise the rent or alternatively, the Tenant would have to give up vacant possession of the rental unit. The Tenant started paying the Landlord \$1,150.00 per month in 2010. No new tenancy agreement was signed, and the rent has been paid in this amount since.

The Tenant stated that he did not know this was illegal in 2010 and he only found out about his rights in or around September to October 2019. As he did not know what to do, he testified that he started talking to people about this issue to get more information about his rights, and he talked to K.W. about it as well. However, he stated that he could not get any answers. In order to get his Landlord's attention, he advised that he stopped paying the rent entirely in January 2020.

K.W. advised that the Tenant mentioned this rent increase to her "probably around September or October" of 2019. She explained to him that he would likely need to have this settled through the Residential Tenancy Branch via a Dispute Resolution proceeding. Furthermore, she knew this information as it was basic knowledge and because she was a renter herself.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 41 of the *Act* stipulates that the Landlord may only increase rent if he complies with the Sections pertaining to rent increases in the *Act*. Furthermore, Section 42 states that the Landlord cannot impose a rent increase for at least 12 months after the date on which the Tenant's rent was first payable for the rental unit or the effective date of the last rent increase made in accordance with this *Act*. As well, the Landlord must give the Tenant a notice of a rent increase at least 3 months before the effective date of the increase, and this notice must be in the approved form. Finally, Section 43 indicates that the Landlord may impose a rent increase only up to the amount: calculated in accordance with the Regulations, ordered by the Director of the Residential Tenancy Branch, or agreed to by the Tenant in writing.

Moreover, Policy Guideline # 37 on the Residential Tenancy Branch website discusses rent increases in depth.

When reviewing the totality of the evidence before me, I find it important to note that this rent increase occurred approximately 10 years ago, but the Tenant did not raise this issue with the Landlord or bring this to the Landlord's attention as an issue at any point. While the Tenant claimed that the Landlord does not respond to communication, there is still a responsibility on the Tenant to demonstrate that he has notified the Landlord that there has been a breach of the *Act* that needs to be corrected.

Given that the Tenant realized some nine years after he started paying \$1,150.00 per month to the Landlord that this might not have complied with the *Act*, the Tenant should have attempted to address his belief that this was an illegal rent increase with the Landlord in an attempt to mitigate any loss. However, there was insufficient evidence that the Tenant made any attempts to address this with the Landlord. Approximately three or four months after discovering that there were rules pertaining to allowable rent increases, the Tenant believed that the appropriate course of action would be simply to withhold the rent to "get the Landlord's attention."

Furthermore, the consistent evidence is that he consulted with K.W. in September or October 2019 about this issue and that she advised him that filing for Dispute Resolution through the Residential Tenancy Branch would be the appropriate course of

action, and she knew this as she was a renter herself. However, the Tenant elected to withhold the rent instead and then he filed for Dispute Resolution almost a year later.

When considering the basis of the Tenant's Application, I also find it important to note the legal principle of estoppel. Estoppel occurs when one party to a legal claim is stopped from taking legal action that is inconsistent with that party's previous words, claims, or conduct. 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. In order to return to a strict enforcement of their right, the first party must give the second party notice (in writing), that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

In this case, there is insufficient evidence before me to indicate that the Tenant ever took any action during the tenancy to address any of his alleged concerns or to minimize reasonably any loss due to a breach of the *Act*, despite his knowledge of the requirements of the *Act* in 2019. As the Tenant failed to make any effort over the course of the tenancy to bring his alleged concerns to the Landlord's attention, I am satisfied that the Tenant, through his silence, provided implied consent that rent would be owed in the amount of \$1,150.00 per month starting in 2010.

While part D of Policy Guideline # 37 speaks to accepted rent increases by stating 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.", I note that this Policy Guideline was updated in December 2017. Prior to this date, a notice of rent increase form was not required. As a result, I do not find it sufficient to accept that, even though he was aware that there was some recourse for tenancy related matters in 2019, that he could take no action at the time, but then reasonably expect to seek recourse over a year later for a matter that started approximately 10 years ago.

When reviewing the totality of the evidence before me, I am not satisfied that the Tenant has established that the Landlord increased the rent illegally. Ultimately, as I am not satisfied that the Tenant has presented compelling evidence to support his claims, I dismiss his Application to dispute a rent increase in its entirety.

As the Tenant was not successful in his claims, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Tenant's Application to dispute a rent increase is dismissed without 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: October 2, 2020

Residential Tenancy Branch