



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FFT

The tenant filed an Application for Dispute Resolution (the “Application”) on September 17, 2020 seeking an order that cancels a rent increase set by the landlord. Additionally, they applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on November 10, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenant and landlord each attended the hearing, and each was provided the opportunity to present submissions.

The landlord confirmed they received notice of the hearing. The tenant ensured delivery to the landlord both by registered mail and in person. The tenant confirmed they sent their prepared documents to the landlord as evidence. The landlord stated they did not prepare their own evidence in advance of the hearing. At the outset I informed both parties that I was recording their testimony as first-hand evidence in this matter. On this basis, the hearing proceeded.

Issue(s) to be Decided

Has the landlord issued a rent increase in compliance with the annual allowable amount permitted by section 43 of the *Act*?

Background and Evidence

I have reviewed all evidence and oral submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. In the hearing the tenant explained the history from the outset of the tenancy in 2014, including the nature of their business (a recovery facility) that is licensed with the City and registered

with the Province. The initial rent amount was \$2,700 per month, and this increased to \$2,900. According to the tenant, approximately 6 or 7 months after the start, the landlord expressed concern about the amount of utilities, and the tenant offered the extra \$200 per month.

The tenant set out the most recent rent payments to the landlord, which occur on the 15th of each month. These are: August 2020 at \$2,900; September 2020 at \$2,900; and October 2020, at \$3,500.

The tenant provided the timeline of events and communication with the landlord. Their version of events is as follows:

- on July 15 the landlord called and stated the need to increase the rent, stating an increase from \$2,900 to \$4,700;
- the landlord stated “if you don’t pay. . .[the tenant] will have to move” – the landlord was not willing to put this in writing;
- the tenant stated they were willing to pay more; however, not \$4,700 per month;
- after this, the tenant received a “lease termination notice” from the landlord, and the tenant would not sign that document;
- the tenant offered \$3,200 per month, this “to show good faith” and the landlord insisted on \$3,500 per month and “[they] won’t evict”;
- the tenant made this move being very concerned about the relationship and concerned that the landlord would later try to evict.

The landlord’s response testimony centred on the fact that their family would be moving to the area. The provided details on their version of the communication with the tenant:

- they told the tenant “If my family comes here, they would have to be around \$4,700 in rent” – this was just a comparison if the family were to come, and not a statement that they would increase the rent to \$4,700 per month;
- the landlord proposed to the tenant: ‘you find a place. . . what would be the price? let me know. . .to figure [the suitable amount] out.’
- it was the tenant who initially proposed the amount of \$3,500 per month – the landlord agreed to this amount going forward.

The tenant responded in the hearing to state they did not offer \$3,500 per month; rather, they agreed to more than the existing amount of rent, but only did so in fear because their clients to the household would live in fear. The tenant then read from a September 28, 2020 statement (not provided in the evidence) wherein they stated the following: “our problems . . .have more

to do with a communication barrier” and “I am willing to do better. . .and pay \$3,500 per month.”

Analysis

On the issue of rent increase, the *Act* part 3 stipulates the amounts prescribed within the Residential Tenancy Regulations and notice thereof to the tenant “at least 3 months before the effective date of the increase.”

The *Act* section 43 provides that a tenant may deduct the increase from rent or otherwise recover the increase, where the landlord collects a rent increase that does not comply with the *Act*. I reproduce this important section here for both parties’ reference:

- (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.
- . . .
- (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.
- . . .
- (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the rent increase from rent or otherwise recover the increase.

To apply these criteria, I shall examine the matter in a twofold matter: did the landlord issue a rent increase; and if they did, may the tenant recover the increase.

I find the tenant has shown that the landlord issued an unjust rent increase. The communication on this was difficult between the parties; however, I find the landlord accepted an amount from the tenant -- in line with an increased amount – and did not follow the proper method as per the *Act* for doing so.

The *Act* part 3 sets out a specific method of rent increase. The evidence of both parties shows the tenant agreed to pay an extra amount in the immediate timeframe after this discussion; however, I find it more likely than not they did so with the primary spur being the possibility of eviction, and their overriding concern for their clients in the recovery facility. The evidence for this is the copy of the “lease termination notice” that the tenant neither signed nor accepted as valid.

I understand the tenant is willing to pay more for rent – to do so would keep the landlord-tenant relationship amicable and ongoing. The tenant understands and appreciates the landlord's position on this. I find the tenant does so with noble intent all around: other evidence for this is the tenant's initial outlay of money to make the whole rental unit up-to-code for their business license and to receive funding from the provincial agency.

I find it more likely than not that the tenant found communication on this issue difficult and, rather than risk further complicating the issue and having the situation devolve into an end of tenancy, made the extra rent payment while feeling some amount of pressure. I find this is a rent increase, and one that does not follow the legal parameters as set out in the *Act*.

I find also the landlord has noble intentions and did not *deliberately* impose a rent increase to the tenant. The landlord presented that they understand the situation and feel compassion for the situation and the clients involved. Nonetheless, they accepted an additional amount of rent. Whatever discussion or agreement between the parties occurred, there is a process for making a rent increase legal: this is with a set schedule of the amount of increase, as well as a strict timeframe with proper notice to the tenant that they are doing so.

Should the parties wish to agree on a further increased amount, that must be clearly documented in writing, as per section 43(1)(c). An increase in this amount paid here –in excess of a legal amount of rent increase -- represents a change to a fundamental term of the agreement. For the tenant to pay otherwise constitutes a breach of the current agreement.

If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the settled rent increase and the tenant's signed accord with that increase.

The landlord must still follow the requirements in section 42 of the *Act* regarding the timing and notice of rent increases. This requires a proper Notice of Rent Increase with the tenant's agreement attached. The tenant must be given three full months' notice of the increase.

In sum, I find it more likely than not that the tenant feels obligated to pay an extra amount. This amounts to a rent increase that does not follow the *Act* and constitutes a separate contract that falls outside of the tenancy agreement. Moving forward with the tenant's willingness to pay more, an agreement must be properly documented. I have set out the method for doing so above.

From the testimony of both parties, I encourage them to maintain an open channel of communication. I find the tenancy has existed to the present time of the hearing with communication established along the way. Both parties bring an understanding and appreciation of the other's priorities to the relationship. As a measure of guidance, I refer both parties to the *Act* and the Residential Tenancy Guideline 37 that set out clearly how a rent increase must be executed.

As the tenant was successful in proving a rent increase, I find the tenant may recover the extra amount they paid in the month of October 2020. As per section 43(5), I authorize the tenant to deduct that amount of the rent increase (\$600) from one future rent payment. Any extra amounts they paid past October are not recoverable here without actual proof that the tenant paid an increased amount past the date of this hearing.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

Conclusion

I find the tenant has established that the landlord accepted payment of a rent increase; this is a rent increase not in compliance with the *Act*. That rent increase is cancelled. The tenant shall recover the prior paid amount by withholding that amount from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 7, 2020

Residential Tenancy Branch