



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on November 28, 2020 (the “Application”). The Tenants applied to dispute a rent increase that is above the amount allowed by law and to recover the filing fee.

The Tenants and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and the documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Has the Landlord imposed a rent increase that is above the amount allowed by law?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started December 01, 2019 and is a month-to-month tenancy. Rent is

\$1,900.00 per month due on the first day of each month. The tenancy agreement includes an addendum which states:

1 – TENANT WILL PAY RENT \$1900 EACH MONTH TENANT EACH OR BOTH WILL BE RESPONSIBLE FOR UNPAID RENT RENT WILL BE INCRICE [SIC] \$50 AUTOMATICALLY BY TERM

The Tenant testified as follows. In the tenancy agreement, the Tenants agreed to a rent increase as of December 01, 2020. However, due to the pandemic and changes to the legislation, all rent increases have been null and void and are not effective anymore. The next available rent increase is not allowed until June or July of 2021. The Tenants have not received a Notice of Rent Increase from the Landlord.

The Landlord testified as follows. Section 43(1)(c) of the *Residential Tenancy Act* (the “Act”) states that a landlord can impose a rent increase that is agreed to by the tenant. The rent increase is written in the tenancy agreement and was agreed to by the Tenants November 13, 2019. The Tenants have agreed to the rent increase from the beginning in the tenancy agreement and therefore the Landlord is permitted to increase the rent pursuant to section 43(1)(c) of the *Act*. The Landlord did not issue a Notice of Rent Increase to the Tenants. Rent is increased automatically each year pursuant to the tenancy agreement.

The Landlord provided written submissions. In addition to the above points, the Landlord states as follows in the written submissions. The Landlord would not have accepted the Tenants at rent of \$1,900.00 per month without the \$50.00 per month annual rent increase. The Landlord spent more than \$10,000.00 updating the house for the Tenants. The Tenants should have to establish that their incomes have decreased because of the pandemic.

The Landlord submitted documentation in support of the written submissions.

Analysis

Part 3 of the *Act* governs rent increases and states:

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...

(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.

Policy Guideline 37 deals with rent increases and states in part:

A. LEGISLATIVE FRAMEWORK

The Legislation permits a landlord to impose a rent increase up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by an arbitrator on application¹, or
- (c) agreed to by the tenant in writing.

A tenant's rent cannot be increased unless the tenant has been given proper notice in the approved form at least three months before the increase is to take effect. The tenant's rent can only be increased once every 12 months. A rent increase that falls within the maximum amount permitted by the applicable Regulation cannot be disputed at a dispute resolution proceeding...

D. TENANT MAY AGREE TO A RENT INCREASE GREATER THAN THE MAXIMUM ALLOWABLE PERCENTAGE AMOUNT

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. 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 agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

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.

(emphasis added)

The *Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation* (the “*Regulation*”) states as follows:

Rent increases – Residential Tenancy Act

8 (1) In this section, “rent increase” does not include an increase in rent that is

(a) for one or more additional occupants, and

(b) authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [requirements for tenancy agreements] of the Residential Tenancy Act.

(2) As an exception to Part 3...of the Residential Tenancy Act and any other provision of the Residential Tenancy Act and the Residential Tenancy Regulation, **if a landlord gives a notice of rent increase under the Residential Tenancy Act and the effective date of the rent increase is after March 30, 2020, the rent increase does not take effect until July 10, 2021.**

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

(emphasis added)

The maximum rent increase amount for 2020 was 2.6%.

In this matter, the maximum rent increase for December 01, 2020 was \$49.40. Pursuant to section 43(1)(c) of the *Act*, the Landlord was permitted to increase rent by an amount agreed to by the Tenants in writing. I did not understand the Tenant to dispute that the Tenants agreed to a \$50.00 rent increase annually.

However, pursuant to Policy Guideline 37, the Landlord must still comply with Part 3 of the *Act* in relation to the timing and notice requirements for rent increases. The Landlord was required to issue the Tenants a Notice of Rent Increase in the approved form. As well, the Tenants had to be given three full months' notice of the rent increase. These requirements apply even where the Tenants have agreed to the rent increase in the tenancy agreement.

The Landlord did not issue the Tenants a Notice of Rent Increase in the approved form three months prior to December 01, 2020 and therefore could not increase rent on December 01, 2020.

Further, if the Landlord was to issue the Tenants a Notice of Rent Increase at this point, it could not be effective until June 01, 2021 pursuant to section 42(2) of the *Act*. However, pursuant to section 8(2) of the *Regulations*, the rent increase would not take effect until July 10, 2021. Section 8(2) of the *Regulations* applies even where a tenant has agreed to the rent increase in writing because the landlord is still required to issue a Notice of Rent Increase and section 8(2) of the *Regulations* applies to all Notices of Rent Increase issued pursuant to Part 3 of the *Act*.

In the circumstances, the Tenants were not required to pay a rent increase as of December 01, 2020 because the Landlord did not issue the Tenants a Notice of Rent Increase three months prior to December 01, 2020. Further, if the Landlord issues the Tenants a Notice of Rent Increase at this point, it will not take effect until July 10, 2021.

The points raised in the Landlord's written submissions are not relevant. The Landlord is required to comply with the *Act*, *Regulations* and Policy Guidelines in relation to rent increases. Further, the Tenants do not have to establish loss of income due to the pandemic for the *Regulations* to apply as there is no such requirement in the *Regulations*.

Given the Tenants were successful in the Application, the Tenants are entitled to recover the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenants can deduct \$100.00 from one future rent payment.

Conclusion

The Tenants were not required to pay a rent increase as of December 01, 2020 because the Landlord did not issue the Tenants a Notice of Rent Increase three months prior to December 01, 2020. Further, if the Landlord issues the Tenants a Notice of Rent Increase at this point, it will not take effect until July 10, 2021.

Given the Tenants were successful in the Application, the Tenants are entitled to recover the \$100.00 filing fee. The Tenants can deduct \$100.00 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: February 22, 2021

Residential Tenancy Branch