



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

DRI

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied to dispute a rent increase.

The Tenant stated that on December 18, 2020 the Dispute Resolution Package was served to an employee for the Landlord. The Agent for the Landlord acknowledged receiving these documents.

On December 14, 2020 and February 22, 2021, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided:

Has there been a rent increase that does not comply with the legislation?

Background and Evidence:

The Tenant and the Agent for the Landlord agree that the Tenant has been living in the rental unit, on a continual basis, for approximately five years, although there is no written agreement.

The Tenant and the Agent for the Landlord agree that rent is paid on a weekly basis. Neither party seemed entirely certain about when rent was due, although the Landlord eventually declared that rent was due in advance, on Sundays.

The Tenant and the Agent for the Landlord agree that this rental unit is located in a motel. The Agent for the Landlord stated that because the unit is in a motel, he was of the understanding the *Residential Tenancy Act (Act)* did not apply. The Tenant stated that a friend recently informed him that the *Act* did apply to these living arrangements.

The Tenant stated that prior to the disputed rent increase the rent was \$140.00 per week. The Agent for the Landlord stated that prior to the disputed rent increase the rent was \$145.00 per week.

The Tenant and the Agent for the Landlord agree that on October 02, 2020 the Tenant was served with a letter informing him that rent would increase to \$175.00 per week, effective November 01, 2020.

The Tenant and the Agent for the Landlord agree that the Tenant has been paying weekly rent of \$175.00 for the period between November 01, 2020 and March 03, 2021. The parties agree that no rent has been paid for any period after March 03, 2021.

Analysis:

Before considering the merits of the Application for Dispute Resolution I must first determine whether the *Residential Tenancy Act (Act)* applies to this living arrangement.

The *Act* defines a tenancy agreement as an agreement, whether written or oral, express, or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Residential Tenancy Branch Policy Guideline #9 reads, in part:

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and
- the tenant pays a fixed amount for rent.

As the Tenant has had consecutive, exclusive possession of this rental unit for approximately five years and he pays a fixed weekly rate, I find there is a presumption that the parties have entered into a tenancy agreement. I therefore find that the parties are subject to the rights and obligations established by the *Act*, and that I have jurisdiction over this dispute.

I find that prior to the disputed rent increase, the weekly rent for this rental unit was either \$140.00 or \$145.00. I am unable to determine the precise amount of weekly rent that was due prior to the disputed rent increase, as there is insufficient evidence to corroborate the Tenant's testimony that it was \$140.00 or to corroborate the Agent for the Landlord's testimony that it was \$145.00. Regardless, I find it is not necessary for me to determine the precise amount of rent due prior to the disputed rent increase.

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is calculated in accordance with the regulations. Section 22(2) of the Residential Tenancy Regulation stipulates that a landlord may impose a rent increase that is no greater than two percent above the annual inflation rate. In 2020 the maximum the amount the rent could be increased at any point in the year was 2.6%, although there were times in 2020 that a rent increase was simply not permitted due to the COVID-19 pandemic.

I find that the rent increase that was imposed by the Landlord on November 01, 2020 was greater than the amount that was permitted at any time in 2020, regardless of whether the rent was \$140.00 per week or \$145.00 per week. As the rent increase was greater than the permitted amount. I find that the Landlord does not have authority to increase the rent to \$175.00 per week pursuant to section 43(1)(a).

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that has been ordered by the director on an application under section 43(3) of the *Act*. As I have no evidence that the Landlord has made an application under section 43(3) of the *Act*, I find that the Landlord does not have authority to increase the rent pursuant to section 43(1)(b).

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is agreed to by the tenant in writing. As I have no evidence that the Tenant agreed to increase the rent to \$175.00 per week, in writing, I find that the Landlord does not have authority to increase the rent pursuant to section 43(1)(c).

Section 43(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with the *Act*, the tenant may deduct the increase from rent owing or otherwise

recover the increase. As the Tenant has not applied for a monetary Order for the overpayment and neither party has submitted proof of the rent due prior to the disputed rent increase, I will not be determining the amount of rent that was overpaid as a result of this rent increase.

Conclusion:

The Landlord did not have the right to increase the rent to \$175.00 in 2020.

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: March 08, 2021

Residential Tenancy Branch