



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 in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied to dispute a rent increase and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that the Dispute Resolution Package was sent to the Landlord, via registered mail, although she does not recall the date of service. The Landlord, speaking through her interpreter, acknowledged receiving the package.

On May 21, 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Advocate for 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.

On September 10, 2021 the Tenant submitted an Amendment to the Application for Dispute Resolution, in which the Tenant added a claim for loss of quiet enjoyment and for the return of her security deposit. The Advocate for the Tenant stated that the Amendment was personally served to the Landlord on September 09, 2021. The Landlord acknowledged receiving the Amendment on September 09, 2021 and I find that Application for Dispute Resolution was amended accordingly.

On September 17, 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Advocate for the Tenant stated that this evidence was served to the Landlord with the Amendment on September 09, 2021. The Landlord denied receiving this evidence. As the Landlord does not acknowledge receiving this evidence, it was not accepted as evidence for these proceedings.

The Tenant was permitted to testify about all of the documentary evidence she submitted. The Tenant was asked if she would like an adjournment for the purposes of re-serving the evidence that was allegedly served to the Landlord on September 09, 2021, at which time the Advocate for the Tenant stated that an adjournment was not necessary.

On September 12, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Advocate for the Landlord stated that this evidence was personally served to the Tenant on September 13, 2021. The Tenant acknowledged receiving this evidence and it was 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.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In the Amendment to the Application for Dispute Resolution the Tenant identified several issues in dispute that are not sufficiently related to the disputed rent increase. I therefore decline to consider any of the issues identified in the Amendment to the Application for Dispute Resolution.

The Tenant retains the right to file another Application for Dispute Resolution for any of the issues identified in the Amendment to the Application for Dispute Resolution.

Issue(s) to be Decided:

Has there been a rent increase that does not comply with the *Residential Tenancy Act (Act)* and, if so, is the Tenant entitled to a rent refund?

Background and Evidence:

The Landlord and the Tenant agree that:

- This tenancy began on November 03, 2012;
- The parties signed a fixed term tenancy agreement, the fixed term of which began on November 01, 2012 and ended on October 30, 2013, for which the rent was \$1,250.00;
- The parties signed a fixed term tenancy agreement, the fixed term of which began on November 01, 2013 and ended on October 31, 2014, for which the rent was \$1,290.00;
- The parties signed a fixed term tenancy agreement, the fixed term of which began on November 01, 2015 and ended on October 31, 2016, for which the rent was \$1,350.00;
- The parties did not sign a tenancy agreement for any period after October 31, 2016;
- Rent was due by the first day of each month;
- On November 01, 2016 rent was increased from \$1,350.00 to \$1,400.00 per month;
- On May 01, 2017 rent was increased from \$1,400.00 to \$1,600.00 per month;
- On May 01, 2018 rent was increased from \$1,600.00 to \$1,650.00 per month;
- On May 01, 2019 rent was increased from \$1,650.00 to \$1,750.00 per month;
- On May 01, 2020 rent was increased from \$1,750.00 to \$1,800.00 per month;
- On May 01, 2021 rent was reduced from 1,800.00 to \$1,700.00 but the Tenants were required to pay a utility charge of \$200.00, which was not previously required.
- The Tenants paid all of the aforementioned rent increases;
- The Landlord served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use;
- The Tenants were not required to pay rent for July of 2021, in compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use;
- The Landlord did not provide the Tenants with written notice of any of the rent increases that occurred on, or after, November 01, 2016;
- The Landlord did not have written authority from the Tenants or the Residential Tenancy Branch to increase the rent on, or after, November 01, 2016;
- **None of the rent increases were imposed because of an extra occupant in the unit; and**
- The rental unit was vacated on July 24, 2021.

The Landlord stated that the Tenant verbally agreed to all of the rent increases that were imposed on, or after, November 01, 2016. The Advocate for the Tenant stated that the Landlord did not verbally agree to the rent increases and that she paid them because she did not know what else she could do.

The Tenant is seeking to recover \$400.00 in monthly rent increases that were paid for 10 months when the rent was increased to \$1,750.00, which is \$4,000.00.

The Tenant is seeking to recover \$450.00 in monthly rent increases that were paid for 12 months when the rent was increased to \$1,800.00, which is \$5,400.00.

The Tenant is seeking to recover \$550.00 in monthly rent increases that were paid for 2 months when the rent was reduced to \$1,700.00 but a utility fee of \$200.00 was added, which is \$1,100.00.

Analysis:

Section 43(1)(a) of the *Residential Tenancy Act (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.

On the basis of the undisputed evidence, I find that on November 01, 2016 the rent was increased from \$1,350.00 to \$1,400.00 per month, which is an increase of 3.7%. As the allowable rent increase in 2016 was only 2.9%, I find that the Landlord did not have the right to increase the rent to \$1,400.00 on November 01, 2016 pursuant to section 43(1)(a) of the *Act*. As the Landlord was not entitled to impose this rent increase, I find that the rent remained at \$1,350.00.

On the basis of the undisputed evidence, I find that on May 01, 2017 the rent was increased from \$1,400.00 to \$1,600.00 per month, which is an increase of 14.3%. As the allowable rent increase in 2017 was only 3.7%, I find that the Landlord did not have the right to increase the rent to \$1,600.00 on May 01, 2017 pursuant to section 43(1)(a) of the *Act*. As the Landlord was not entitled to impose this rent increase, I find that the rent remained at \$1,350.00.

On the basis of the undisputed evidence, I find that on May 01, 2018 the rent was increased from \$1,600.00 to \$1,650.00 per month, which is an increase of 3.1%. The allowable rent increase in 2018 was 4%.

Section 42(2) of the *Act* stipulates that a landlord must give notice of a rent increase at least 3 months before the effective date of the increase. Section 42(3) of the *Act* specifies that the notice of rent increase must be provided in the approved form. As the

Landlord did not give the Tenant written notice of the 2018 rent increase, I find that the Landlord did not have the right to increase the rent in 2018, pursuant to sections 42(2) and 42(3) of the *Act*. As the Landlord was not entitled to impose this rent increase, I find that the rent remained at \$1,350.00.

On the basis of the undisputed evidence, I find that on May 01, 2019 the rent was increased from \$1,650.00 to \$1,750.00 per month, which is an increase of 6.1%. As the allowable rent increase in 2019 was only 2.5%, I find that the Landlord did not have the right to increase the rent to \$1,750.00 on May 01, 2019 pursuant to section 43(1)(a) of the *Act*. As the Landlord was not entitled to impose this rent increase, I find that the rent remained at \$1,350.00.

On the basis of the undisputed evidence, I find that on May 01, 2020 the rent was increased from \$1,750.00 to \$1,800.00 per month. Landlords were not permitted to increase the rent, due to the COVID-19 pandemic, for the period between March 01, 2020 and January 01, 2022. The Landlord was, therefore, not permitted to increase the rent on May 01, 2020 by any amount. As the Landlord was not entitled to impose this rent increase, I find that the rent remained at \$1,350.00.

On the basis of the undisputed evidence, I find that on May 01, 2021 the Tenant began paying \$1,700.00 in rent plus a utility charge of \$200.00, which was not previously required. As the Tenant was not previously required to pay a utility charge, I find that the Tenant's rent was, effectively, increased from \$1,800.00 to \$1,900.00. I find that the Landlord was not permitted to increase the rent on May 01, 2021, due to the COVID-19 pandemic rent freezes. As the Landlord was not entitled to impose this rent increase, I find that the rent remained at \$1,350.00.

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 cannot conclude that the Landlord had authority to impose any of these rent increases 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 the proposed rent increase, in writing, I cannot conclude that the Landlord had authority to impose any of these rent increases pursuant to section 43(1)(c).

I have placed no weight on the Landlord's submission that the Tenant verbally agreed to the increases, as the Tenant denied that submission and an agreement to increase the rent must be made in writing.

Section 43(5) of the *Act* stipulates that 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.

On the basis of the undisputed evidence, I find that the Tenant paid monthly rent of \$1,750.00 for the period between May 01, 2019 and April 30, 2020. As the Landlord only had the right to collect \$1,350.00 in rent for this period, I find that the Tenant is entitled to collect the overpayment of \$400.00, pursuant to section 43(5) of the *Act*. In these circumstances, the Tenant has only applied to recover 10 months of the overpayment, and the Tenant's claim for \$4,000.00 is granted.

On the basis of the undisputed evidence, I find that the Tenant paid monthly rent of \$1,800.00 for the period between May 01, 2020 and April 30, 2021. As the Landlord only had the right to collect \$1,350.00 in rent for this period, I find that the Tenant is entitled to collect the overpayment of \$450.00, pursuant to section 43(5) of the *Act*. The Tenant has applied to recover 12 months of the overpayment, and the Tenant's claim for \$5,400.00 is granted.

On the basis of the undisputed evidence, I find that the Tenant paid monthly rent of \$1,900.00 for the period between May 01, 2021 and June 31, 2021. As the Landlord only had the right to collect \$1,350.00 in rent for this period, I find that the Tenant is entitled to collect the overpayment of \$550.00, pursuant to section 43(5) of the *Act*. The Tenant has applied to recover 2 months of the overpayment, and the Tenant's claim for \$1,100.00 is granted.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$10,600.00, which includes \$10,500.00 in rent overpayments and \$100.00 for the filing fee, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as

an Order of that Court.

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: September 27, 2021

Residential Tenancy Branch