



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- disputation of a rent increase from the landlords, pursuant to sections 42 and 43; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlords' interpreter also attended the hearing and affirmed to translate to the best of her ability from the English language to the Cantonese language and from the Cantonese language into the English language.

Both parties confirmed their email addresses for service of this Decision and Order.

The tenant testified that the landlords were served with a copy of this application for dispute resolution and evidence via registered mail on November 5, 2021. The landlords testified that they received the above documents on November 6, 2021. I find that the above documents were served on the landlords in accordance with sections 88 and 89 of the *Act*.

The landlords testified that they served the tenant with their evidence via registered mail on January 10, 2022. The landlord provided the tracking number in the hearing which is located on the cover page of this decision. The tenant testified that he did not receive the above package. The Canada Post website states that the above package was mailed on January 10, 2022 and was available for pick up on January 11, 2022;

however, the package was not picked up. Based on the tracking number entered into evidence by the landlords, I find that the landlords' evidence was served on the tenant in accordance with section 88 of the *Act*, and the tenant was deemed served with it on January 15, 2022, five days after its mailing, in accordance with section 90 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of a rent increase from the landlords, pursuant to sections 42 and 43 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. The tenant moved into the subject rental property on March 1, 2018, paying rent in the amount of \$1,450.00, payable on the first day of each month. The tenant moved out at the end of December 2021. A security deposit of \$750.00 was paid by the tenant to the landlord. A written tenancy agreement outlining the above was signed by both parties and a copy was submitted for this application. No other written tenancy agreements were signed by the parties.

The tenancy agreement states that:

This tenancy created by this agreement starts on March 1, 2018 and is for a fixed term ending on February 28, 2019. At the end of this time, the tenancy is ended and the **tenant must vacate the rental unit. This requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy Regulation, or if this is a sublease agreement as defined in the Act. Reason tenant must vacate (required):** For the renovation purpose.

The tenant testified that the tenancy agreement states that the subject rental property includes a working dishwasher. The tenant testified that the dishwasher was not working. The tenant testified that in 2020 he told the landlords that if they did not fix the dishwasher he would move out. The tenant testified that the landlords agreed to renovate the kitchen at the subject rental property if the tenant agreed to a rent increase in the amount of \$100.00 per month starting June 1, 2020. The tenant testified that he verbally agreed to the rent increase and confirmed his agreement via text. The tenant testified that he paid rent in the amount of \$1,550.00 from June to November 2020.

The tenant testified that the landlords originally agreed to complete the kitchen renovation in the summer of 2020 while the tenant was out of the country for approximately two months. The tenant testified that due to COVID 19, he was not able to leave the country in the summer of 2020 and so the landlords agreed to defer the renovation to the summer of 2021 during a planned stay outside the country. The tenant testified that the landlords did not repair the subject rental property in the summer of 2021 when he was out of the country.

The tenant testified that in December of 2020 the landlords asked for another rent increase of \$50.00 per month for a total rent of \$1,600.00 per month to cover the cost of house painting. The tenant testified that he paid rent in the amount of \$1,600.00 per month from December 2020 to October 2021. The tenant testified that the landlords never served him with a Notice of Rent Increase on a Residential Tenancy Branch form, and that at the times of the rent increases, he did not know that rent increases were not permitted. The tenant testified that he stopped paying the rent increases in November 2021. The tenant testified that he paid \$1,450.00 per month in rent from November 2021 to December 2021.

The tenant testified that he is seeking the return of the illegal rent increases from the landlord as follows:

- June 2020 to November 2020: \$100.00 per month for six months = \$600.00
- December 2020 to October 2021: \$150.00 per month for 11 months= \$1,650.00

The landlords testified that the first rent increase had nothing to do with kitchen renovations. The landlords testified that on March 2, 2020, the tenant texted the landlords that was moving out at the end of the month. The landlords testified that pursuant to this notice, they planned on finding new tenants at a higher rental rate starting in April 2020. The landlords testified that on March 14, 2020 the tenant texted

the landlord that he no longer planned on moving out because “something happened with the new place.” The March 2, 2020 and March 14, 2020 text messages were entered into evidence. Both parties agreed to their contents.

The tenant testified that he never had any intention of moving out and testified that he told the landlords that he was moving out to pressure them to fix the dishwasher.

The landlords testified that the tenant agreed to a \$100.00 per month rent increase effective June 1, 2020 because the tenant’s decision to stay in the subject rental property cost the landlords’ the opportunity to earn more rent at the subject rental property from new renters.

The landlords entered into evidence a text message from the tenant regarding the rent increase dated April 29, 2020 which states:

Hi [landlord C.E.S.W.]. As you can see i only worked 5 days this month so far. I applied for cerb \$2000. That is why I can afford our regular rent 1450. With no increase this month. I am no eligible for rent assist because I am working agaian [sic] from may 1st. I already applied for that too. Starting next month hopefully my work will continue normally, i will have no problem raising the rent to 1550. I would really appreciate your cooperation in this matter. As things are ver [sic] hard right now.

The landlords responded, “ok! May God bless you and your family”. No text messages regarding the nature of the increase or what led to it were entered into evidence.

The landlords testified that the tenants requested the property be re-paved and the patio repaired. The landlords testified that the tenants verbally agreed to a \$50.00 per month rent increase in exchange for the landlords’ completion of the requested repairs/improvements. The landlord entered evidence showing the above work was performed. The landlords testified that the tenant paid \$1,600.00 in rent from December 2020 to October 2021.

The landlords testified that they agreed to install a new dishwasher at the subject rental property in the summer of 2021 while the tenant was out of country. The landlords testified that they attempted to do so but found that the kitchen wiring was too damaged to allow for its installation. The landlords testified that because the dishwasher could not

be installed, the tenant stopped paying full rent in November 2021 and only paid \$1,450.00 per month for November and December 2021.

The landlords testified that the tenancy agreement signed by both parties was in effect from March of 2018 to February of 2019 and that the parties did not have a tenancy agreement after that. The landlords testified that all rent increases were discussed verbally and no written rent increase notices on Residential Tenancy Branch form were served on the tenant.

Analysis

The tenancy agreement signed by both parties states:

This tenancy created by this agreement starts on March 1, 2018 and is for a fixed term ending on February 28, 2019. At the end of this time, the tenancy is ended and the **tenant must vacate the rental unit. This requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy Regulation, or if this is a sublease agreement as defined in the Act. Reason tenant must vacate (required):** For the renovation purpose.

Section 13.1 of the Residential Tenancy Act Regulation states:

13.1 (1) In this section, "**close family member**" has the same meaning as in section 49 (1) of the Act.

(2) For the purposes of section 97 (2) (a.1) of the Act [*prescribing circumstances when landlord may include term requiring tenant to vacate*], the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that

(a) the landlord is an individual, and

(b) that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

I find that the vacate clause in the tenancy agreement is of no force or effect because it states a reason to end the tenancy that is not permitted under section 13.1 of the

Regulation. Renovation is not a permitted reason to end the tenancy under section 13.1 of the Regulation.

Section 44(3) of the *Act* states:

If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I find that at the expiry of the signed fixed term tenancy agreement, that being February 28, 2019, this tenancy agreement continued on a month-to-month basis because the move out clause was void. I find that despite the tenant's March 2020 text message about ending the tenancy, the tenancy either continued or was reinstated for April 2020 at the same rental rate of \$1,450.00 as the landlord accepted the rent of \$1,450.00 for both April and May 2020.

Section 43 of the *Act* states:

- 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.
- (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.
- (4)[Repealed 2006-35-66.]
- (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.

Section 43.1(2) of the *Act* states:

Notice of rent increase has no effect

(2)A notice given under this Part for an increase based on a calculation made under section 43 (1) (a) has no effect if the notice

(a)is received before September 30, 2021, as determined under subsection (1) of this section, and

(b)has an effective date that is after March 30, 2020 and before January 1, 2022.

I find that pursuant to section 43.1(2) of the *Act*, the verbal/text message notices of rent increase are of no effect. Ministerial Order 089 and Ministerial Order 195 made under the *Emergency Program Act* disallowed regular rent increases from March 30, 2020, to the end of this tenancy. Pursuant to the above Ministerial Orders and section 43.1(2) of the *Act*, the landlords were not permitted to raise the rent in June of 2020 or December of 2020. I also note that the notices of rent increase were not provided in the correct written form, contrary to section 42 of the *Act* and were for more than the yearly allowable amount, contrary to section 43 of the *Act*. The maximum allowable increase for 2020, before the prohibition on rent increases, was 2.6% which equates to \$37.70 for the year.

Residential Tenancy Branch Policy Guideline #37 (PG #37) states:

A tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase. Agreements must be in writing, must clearly set out the rent increase (for example, the percentage increase and the amount in dollars), and must be signed by the tenant. A Notice of Rent Increase must still be issued to the tenant three full months before the increase is to go into effect. The landlord should attach a copy of the written agreement signed by the tenant to the Notice of Rent Increase given to the tenant.

I find that while it is clear the tenant initially agreed to the rent increases, the agreements were not set out in writing and signed by the tenant. Based on the testimony of both parties I find that the landlords did not serve the tenant, on either occasion of increased rent, with a Notice of Rent Increase in the correct form, as set out in (PG #37). I therefore find that the landlords were not permitted, on either occasion to increase the rent via agreement.

I find that for the entire duration of this tenancy, the landlord was only entitled to collect \$1,450.00 per month in rent from the tenant.

Section 43(5) of the *Act* states:

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.

Pursuant to section 43(5) of the *Act*, I find that the tenant is entitled to recover the rent increases paid to the landlord from June 2020 to October 2021 in the amount \$2,250.00.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$2,350.00.

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: January 31, 2022

Residential Tenancy Branch