



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 an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Notice of Rent Increase pursuant to section 43;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant SV attended for the tenants ("the tenant"). The landlord attended. The parties were given the opportunity to present testimony and submit evidence. The hearing process was explained.

No issues were raised regarding service. I find each party served the other in compliance with the *Act*.

Each party stated they were not recording the hearing.

Each party provided their email address for the receipt of the Decision.

Issue(s) to be Decided

Is the tenant entitled to an order setting aside a rental increase and reimbursement of the filing fee?

Background and Evidence

The parties agreed they entered into a tenancy agreement effective February 1, 2021 for monthly rent of \$2,500.00 payable on the first of the month. The tenant provided a security deposit of \$1,250.00 and a pet deposit of \$1,250.00. The agreement was for a one-year term.

The landlord sent the tenant a Notice of Rent Increase in the RTB which he testified he received on February 8, 2022. The Notice is dated December 12, 2022 and sets a rent increase of \$100.00 effective March 1, 2022. A copy of the Notice was submitted which is in the standard RTB form.

During the hearing, the landlord acknowledged that they had backdated the Notice to December 12, 2022 as that was the time the landlord asked the tenant to increase the rent.

The tenant asserted that the Notice was invalid as it was backdated and was for an amount greater than the allowable annual rent increase.

The landlord stated the Notice was dated to reflect the start of their request for a rent increase, the Notice is valid, and the rent should be increased by \$100.00 effective March 1, 2022..

The tenant requested an Order that the rent increase be set aside.

The landlord requested that the tenant's claim be dismissed.

Analysis

The Act addresses the requirements and conditions for rent increases in sections 42 and 43. The portions of these sections relevant to the tenants' application state:

Timing and notice of rent increases

42 (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.

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 contemplates sections 42 and 43, It, in part, states:

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 given with three full months' notice of the increase.

The approved form of notice of rent increase (Form RTB-7) provides significant information to the tenants regarding their rights under the Act. This information includes:

- A landlord must give a tenant at least 3 whole month's notice, in writing, of a rent increase. For example, if the rent is due on the first day of the month and the tenant is given notice any time in January, even January 1st, there must be 3 whole months before the rent increase begins. In this example, the months are February, March, and April, so the rent increase would begin on May 1st. The landlord must use this form, Notice of Rent Increase, and must serve according to the Residential Tenancy Act.
- It is an offence for a landlord or a landlord's agent to collect a rent increase in any other way other than in accordance with Part 3 of the Residential Tenancy Act.

[...]

- A tenant may not apply for dispute resolution to dispute a rent increase that complies with Part 3 of the RTA.
- A landlord may only impose a rent increase up to the amount calculated in accordance with the regulations or as ordered by an arbitrator. If a tenant believes that the rent increase is more than allowed by the regulations, the tenant may contact the Residential Tenancy Branch for assistance.
- For further information on rent increases, see Part 3 of the Residential Tenancy Act and Part 4 of the Residential Tenancy Regulation. You may also call the recorded 24-hour information line or visit the B.C. Government Web site to find out how to contact a Residential Tenancy Branch or to get more information (this information is at the bottom of page 1)

I find the Notice is not in the required form as the form was signed in February 2022 and the landlord inserted a date two months earlier. The landlord acknowledged they backdated the form. I find this action to nullify the Notice and to invalidate the form. This resulted in the Notice being invalid.

I acknowledge the landlord attempted to discuss the proposed rent increase with the tenant some time before issuing the Notice. This does not justify backdating the Notice to the beginning of discussions.

In 2022, the allowable rent increase is 1.15%. I find that a rent increase of \$100.00 exceeds the allowable rent increase.

I find the tenant has met the burden of proof on a balance of probabilities with respect to their claims. I find the landlord has failed to comply with the provisions of the Act with respect to the proposed rent increase and the form of the Notice. I find the rent increase unlawful, and I set aside the Notice which has no effect.

The tenant did not pay additional rent pursuant to the Notice.

I order that the rent is unchanged from the amount set out in the agreement.

As the tenant has been successful in their claim, they are entitled to reimbursement of their filing fee of \$100.00 which I direct they may deduct from rent on a one-time basis.

Conclusion

The Notice of Rent Increase dated December 3, 2021 is set aside and is of no effect.

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: June 09, 2022

Residential Tenancy Branch