



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 for Dispute Resolution (the Application) filed by the Tenant under the Residential Tenancy Act (the Act) on May 21, 2022, seeking:

- To dispute a rent increase; and
- Recover their filing fee.

The hearing was convened by telephone conference call at 11:00 AM on October 3, 2022, and was attended by the Tenant and the Landlords. All testimony provided was affirmed. As the Landlords acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP) and the documentary evidence before me from the Tenant, and raised no concerns with regards to service date or method, the hearing therefore proceeded as scheduled and I accepted the Tenant's documentary evidence for consideration. The Landlords did not submit documentary evidence for my consideration or serve any documentary evidence on the Tenant in relation to this hearing. The parties were provided with an opportunity to present their evidence and testimony for consideration.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed at the hearing.

Issue(s) to be Decided

Has rent been increased contrary to the Act?

Is the Tenant entitled to recovery of their filing fee?

Background and Evidence

Although there was a written tenancy agreement in the documentary evidence before me, the majority of the agreement was not written in English. At the hearing the Tenant stated that the periodic tenancy commenced on July 1, 2012, that rent in the amount of \$1,200.00 was due on the first day of each month at the start of the tenancy and that they are to pay 50% of the gas and electricity bill to the Landlord under the tenancy agreement. Although the Landlord agreed that the tenancy began in 2012, that rent in the amount of \$1,200.00 was due on the first day of each month, and that 50% of the gas and electricity bills were to be paid to them by the Tenant, they stated that it was a one-year fixed term tenancy, not a periodic tenancy, and that it commenced on June 19th not July 1st.

Despite the above disagreement about when the tenancy started and whether it was initially periodic or fixed term in nature, the parties agreed that the tenancy continued at a monthly rate of \$1,200.00 plus 50% of the gas and electricity bills, until July 1, 2016, when rent was increased to \$1,350.00. The Tenant stated that rent was increased by mutual agreement between the parties to include utilities, as the new upstairs occupants had utilities included in the cost of their rent, and as a result, they were using what the Tenant described as an exorbitant amount of utilities, which was unfair to them as they shared utility costs. The Landlords disagreed that this rent increase included utilities, but acknowledged that they did not ordinarily collect utilities from the Tenant after this rent increase, as they did not want to “fight” with the Tenant about it.

The parties agreed that in April of 2021 the Landlords advised the Tenant that they would again be required to pay 50% of the gas and electricity bills, on top of the rent amount. The Tenant stated that the Landlords also attempted to increase the rent to \$1,400.00 at this time as well, but they could not afford that amount and rent remained at \$1,350.00, plus 50% of the gas and electric bill. The Landlords agreed that in April of 2021 they advised the Tenant that they would have to begin paying 50% of the utilities again on top of their rent amount, as they had completed renovations to the other rental unit in the property and their property taxes had increased significantly since the start of the tenancy. However, they stated that the Tenant only paid utilities three times since that date. The Tenant disagreed.

Although the Landlords acknowledged that they never served a notice of rent increase on the Tenant in accordance with the Act, they stated that the rent increase in 2016 and the requirement for the Tenant to begin paying 50% of the utilities again in 2021 were reasonable as they have completed a number of renovations to the property, their property taxes have increased significantly since the start of the tenancy, and the rent paid by the Tenant is/was very low in comparison to market rent. Although the Tenant submitted copies of two text messages allegedly between themselves and the Landlords regarding the issue of rent and utilities, these text messages were not in English and no written translation was provided.

Analysis

Section 41 of the Act states that a landlord must not increase rent except in accordance with this part. Section 42(1) of the Act states 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.

Sections 41(2) and 41(3) of the Act also state that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase and that a notice of a rent increase must be in the approved form. Section 43 of the Act sets limits on the amount of a rent increase.

As the Landlords acknowledged at the hearing that they had not served a notice of rent increase in accordance with the Act, I find that rent was never increased under section 41 of the Act. However, section 14(2) of the Act states that a tenancy agreement may be amended to add remove or change a term if both the landlord and tenant agreed to the amendment.

The parties agreed at the hearing that they mutually agreed to increase rent to \$1,350.00 in July of 2016. While the Landlords denied mutually agreeing to include utilities in the above noted rent increase as alleged by the Tenant, at the hearing they stated that they did not ordinarily seek the recovery of any utility amounts from the Tenant between July of 2016 and April of 2021, and in fact could not provide me with any information when asked about when or if the payment of utilities was requested from the Tenant during this period. As a result, I find on a balance of probabilities that the Landlords neither requested nor collected any amounts for the payment of utilities from the Tenant during this period. Based on the above I find that the Landlords therefore either explicitly or impliedly agreed that utilities were now included in the cost of the \$1,350.00 rent. I therefore find that the parties agreed to change the terms of the tenancy agreement in July of 2012, as allowable under section 14(2) of the Act, to include the cost of utilities in rent, and therefore increase the monthly rent amount to \$1,350.00.

Based on the above, and pursuant to section 14(2) of the Act, I find that it was therefore not open to the Landlords to unilaterally decide in April of 2021, that the Tenant must again begin paying 50% of the cost of the gas and electricity bills on top of the increased rent amount, and that in doing so, they breached the Act by attempting to circumvent the sections relating to changes to a tenancy agreement and rent increases. I therefore grant the Tenant's Application and find that rent in the amount of \$1,350.00 has been due on the first day of each month since July 1, 2016, and that this amount includes gas and electricity use.

As the Tenant was successful in their Application, I also grant them authorization to withhold \$100.00 from the next months' rent payable under the tenancy agreement for recovery of the filing fee, pursuant to sections 72(1) and 72(2)(a) of the Act.

As neither party was prepared to present accurate evidence and testimony regarding the amounts of utilities paid by the Tenant after July of 2016, I have made no findings of fact in relation to whether or not the Tenant has overpaid utilities, and if so, by how much. Should the Tenant believe that they are entitled to compensation as a result of

this decision and my findings regarding the amount of rent and utilities payable under the tenancy agreement, they may file an Application for Dispute Resolution with the Residential Tenancy Branch seeking recovery of these amounts, should they wish to do so.

Conclusion

I grant the Tenant's Application seeking to dispute an unlawful rent increase, and order that rent in the amount of \$1,350.00 has been due on the first day of each month, including gas and electric bill, since July 1, 2016.

I grant the Tenant authorization to withhold \$100.00 from the next months' rent payable under the tenancy agreement, pursuant to sections 72(1) and 72(2)(a) of the Act.

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: October 06, 2022

Residential Tenancy Branch