



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 by the Tenants filed under the *Residential Tenancy Act* (“the Act”) to dispute a rent increase and to recover the filing fee for their application. The matter was set for a conference call.

Both the Tenants attended the hearing and were each affirmed to be truthful in their testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenants testified that the Landlord had been served the Application for Dispute Resolution and Notice of Hearing documents by Canada Post Registered mail, sent on September 29, 2022, and provided a tracking number for the mailing. Therefore, I find that the Landlord had been duly served in accordance with sections 89 and 90 of the *Act*.

The Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Was the 2021 rent increase issued by the Landlord in excess of the allowable amount?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The Tenants testified that their tenancy began on September 1, 2019, with an agreed-upon rent amount of \$1,200.00 per month, and they paid the Landlord a \$600.00 security deposit at the beginning of the tenancy. The Tenants submitted a copy of the tenancy agreement into documentary evidence.

The Tenants testified that the Landlord issued them a rent increase notice on December 1, 2021, which indicated that their rent was going up \$200.00 per month to a new monthly rent amount of \$1,400.00 per month, effective April 1, 2022. The Tenants submitted a copy of the rent increase notice into documentary evidence.

The Tenants testified that the allowable rent increase for 2022 was 1.5%, which is only \$8.00 per month. The Tenants testified that they believe the Landlord breached the Act and issued them an illegal rent increase. The Tenants are requesting the recovery of the amount they paid in the illegal rent increase, in the amount of \$1,152.00; consisting of a \$192.00 overpayment in rent for the months of April, May, June, July, August, and September 2022.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 43 of the *Act* states the following regarding rent increases:

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.

(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.

Pursuant to section 43(1) of the *Act* a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations. This amount is set by the Residential Tenancy Branch each year, and for 2022 it was set at 1.5% for residential tenancies. Which would have allowed for an \$8.00 a month rent increase under this tenancy agreement.

I have reviewed the rent increase notice issued by the Landlord and find that the \$200.00 monthly rent increase contained in this notice equalled a 16.7% increase in monthly rent. I find that the Landlord was in breach of section 43 of the *Act* when they issued this rent increase to the Tenants in excess of the allowable amount.

Therefore, I find that pursuant to section 43 of the *Act* the Tenants have successfully proven that they are entitled to the return of their overpayment in rent in the amount of \$1,152.00; consisting of a \$192.00 per month for the months of April, May, June, July, August, and September 2022. I award the Tenants a monetary award of **\$1,152.00** in the recovery of this overpaid rent.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the **\$100.00** filing fee paid for her application.

Conclusion

I find that the Landlord breached section 43 of the *Act* when they issued a rent increase above the allowable amount.

I grant the Tenants a **Monetary Order** in the amount of **\$1,252.00**. The Tenants are provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord 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, 2023

Residential Tenancy Branch