



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms receipt of the Tenant’s evidence. The Tenant states that they did not receive the Landlord’s evidence. It is noted that the Landlord’s evidence consists of a one-page portion of the Tenant’s application and as such I consider that the Tenant already has this evidence.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on January 1, 2019. Rent of \$980.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$490.00 as a security deposit and \$100.00 as a utility deposit. The Landlord gave the Tenant a notice of rent increase dated August 30, 2019 for a monthly rental increase of \$25.00 starting January 1, 2020.

The Tenant states that the rental increase allowed for January 1, 2020 should have only been as much as \$14.27. The Tenant claims return of the overpaid rent.

The Tenant states that in December 2021 the Landlord forced the Tenant to pay another increase of \$295.00 starting January 1, 2022 as the Landlord's costs had gone up. The Tenant states that no notice of rent increase was given. The Tenant claims return of the \$295.00 from January 1, 2022 to and including January 1, 2023.

The Landlord states that in September 2021 the Tenant verbally agreed to pay the extra rent as the Tenant wanted to convert a garage space, that was not being used as a garage and that was not part of the tenancy, into an extra room for the Tenant's use.

The Tenant states that the garage is a part of the tenancy as the only entrance into the unit is through the garage that connects to the unit's kitchen. The Tenant states that they never agreed to pay the extra rent and that the Landlord forced the Tenant to pay the extra rent. The Tenant states that the Landlord never had use of the garage and that no changes or renovations have been made to the garage area.

The Landlord states that the Tenant resides in the lower part of a house with the upper part occupied by another tenant who does not have any use of that garage area.

Analysis

Section 19(1) of the Act provides that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. Section 19(2) of the Act provides that if a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment. Section 1 of the Act provides that "**security deposit**" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the

tenant respecting the residential property. As the \$100.00 collected by the Landlord was for a utility liability or obligation respecting the residential property and as the Landlord had already collected the equivalent of ½ the month's rent for liabilities and obligations, I find that the Landlord collected more than allowed. Although the Tenant did not apply to have the \$100.00 returned to the Tenant, out of expediency I order that the Tenant may recover this **\$100.00** by deducting it from future rent payable.

I note that the tenancy agreement also contains other clauses that appear to be contrary to the Act. I strongly caution the Landlord to review the terms of the tenancy agreement for consistency with the Act. For each Parties benefit I alert them to section 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations.

Section 43(1) of the Act provides that 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.

Section 43(5) of the Act provides 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. The standard allowable rent increase for 2020 as set out in the Residential Tenant Branch Website was 2.6%. As the rent increase of \$50.00 for 2020 was less than the allowable rent increase, I find that the Tenant is not entitled to recover any of that rent increase and I dismiss this part of the claim.

The tenancy agreement does not set out what is included with the rent payable or anything restricting the use of the garage area. There is no written agreement to amend the tenancy agreement to expand the unit area. For these reasons and as it is undisputed that the Tenant has to access the unit through the garage that is attached to the kitchen with no other persons having rights to using the garage I find that the Tenant

has both access to and use of the garage area. There is no agreement in writing to increase the rent for the unit. For these reasons I find that the Tenant has substantiated that the Landlord collected additional rent without complying with the Act and that the Tenant is therefore entitled to the compensation of **\$3,835.00** for the period January 1, 2022 to January 1, 2023 inclusive (13 months x 295.00).

As the Tenant's claim has met with substantial success I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$4,035.00** (3835.00 + 100.00 +100.00). If the Tenant chooses, the Tenant may deduct this amount from future rents payable in full satisfaction of the entitlement.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$4,035.00**. If necessary, this order may be filed in the 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 Act.

Dated: January 11, 2023

Residential Tenancy Branch