



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *DRI, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, to dispute a rent increase and to recover the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant stated that she served the landlord with a notice of hearing package but did not serve the landlord with her evidence package. The tenant agreed that she had received the landlord's evidence. Accordingly, the tenant's evidence was not used in the making of this decision.

Issues to be decided

Did the landlord increase rent in compliance with the *Act*?

Did the tenant overpay rent?

Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on June 01, 2021. The monthly rent at the start of tenancy was \$1,300.00 payable on the first day of each month.

Both parties agreed that the landlord imposed a rent increase of 5% effective September 01, 2022, increasing the rent from \$1,300.00 to \$1,365.00. The tenant stated that in September 2022, she paid \$1,350.00 by e-transfer and paid the balance of \$15.00 in cash to the landlord.

Both parties agreed that the tenant paid \$1,365.00 for the following months right up to the month of this hearing. The tenant stated that the total overpayment for 6 months is \$390.00.

During the hearing, the landlord agreed that from now on the rent was reinstated to \$1,300.00 per month.

Analysis

Pursuant to section 43 of the *Residential Tenancy Act*, a landlord may impose a rent increase only up to the amount calculated in accordance with the Regulations or ordered by the director on an application by the landlord or agreed to by the tenant in writing. If a landlord collects a rent increase that does not comply with the Regulations, the tenant may deduct the increase from rent or otherwise recover the increase.

In this case, the landlord imposed a rent increase effective September 01, 2022, at a rate of 5%, which exceeded the approved rate of 1.5%. This increase was not ordered by the director as the landlord had not made application for a rent increase in excess of the legislated amount and was not agreed to by the tenant in writing. This non-compliant increase raised the rent from \$1,300.00 to \$1,365.00.

During the hearing, the landlord agreed to reinstate the rent back to the original amount of \$1,300.00. Therefore, the tenant overpaid rent in the amount of \$65.00 per month for a period of 6 months. Accordingly, the tenant overpaid rent in the total amount of \$390.00 for this period.

Pursuant to section 43 of the *Residential Tenancy Act*, I find that the landlord imposed a rent increase in contravention of the Regulations and therefore the tenant is entitled to recover the amount of the increase.

Accordingly, I find that the tenant has established a claim of \$390.00 for overpaid rent. Since the tenant has proven her case, she is entitled to the recovery of the filing fee of \$100.00 for a total claim of \$490.00.

The rate of rent that the tenant must pay for March 2022 and onwards is \$1,300.00. The tenant may make a onetime deduction of \$490.00 off rent for March 2023. The rent payable on March 01, 2023, will be \$810.00.

Rent for the following months will be \$1,300.00, until the rent is increased in compliance with the Regulations or pursuant to an order from the Director.

Conclusion

The tenant may make a onetime deduction off rent for March 2023 in the amount of \$490.00.

The tenant must pay \$810.00 as rent for March 2023.

The tenant will pay rent of \$1,300.00 for April 2023 and for the following months until further notice of a rent increase.

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: February 09, 2023

Residential Tenancy Branch