



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OLC, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

A.-D.C. appeared as the Tenant. P.B. and F.B. appeared as the Landlords.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised that she sent her application and evidence by way of registered mail sent in October 2022. The Landlords acknowledge receipt of the registered mail package with the application, but deny that Tenant served any evidence. I enquired with the Tenant whether she had any proof that the registered mail contained her evidence. She insists that it did, but admits she has not proof of the same.

Dealing first with the Tenant’s application, I find pursuant to s. 71(2) of the *Act* that it was sufficiently served on the Landlords as they acknowledge its receipt. Dealing next with the Tenant’s evidence, I am unable to make a finding that it has been served at all as there is no proof of service and a specific denial of receipt. I find that it would be procedurally unfair to review and consider the Tenants evidence.

I enquired with the Landlords whether their response evidence was served on the Tenant and was advised that it had been sent via registered mail sent on February 6,

2023. The Tenant acknowledges receipt on February 10, 2023 and raised issue with late service. Rule 3.15 of the Rules of Procedure requires respondents to serve their evidence on applicants and that evidence must be received by applicants at least 7 days prior to the hearing. As the hearing took place on February 16, 2023, I find that the Landlords failed to serve their evidence in accordance with the timelines established by the Rules of Procedure. Accordingly, I find that it would be procedurally unfair to include it.

Given the issues with service, I enquired whether the parties consented to the inclusion of basic documents that are in their possession, namely the tenancy agreement and the disputed notice of rent increase. The parties consented to doing so despite the issues with service. Accordingly, I include the tenancy agreement and notice of rent increase provided to me by both parties. All other documentary evidence provided to the Residential Tenancy Branch by the parties is otherwise excluded as they were not properly served.

Issues to be Decided

- 1) Should the Landlord be ordered to comply with the *Act*, tenancy agreement, or regulations?
- 2) Is the Tenant entitled to her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details concerning the tenancy:

- The Tenant moved into the rental unit in March 2019.
- At the outset of the tenancy, rent of \$1,400.00 was due on the first day of each month.

I have been provided with a copy of the tenancy agreement by the parties. I am also provided with a copy of notice of rent increase signed by the Landlord P.B. on September 1, 2022 (the "Notice of Rent Increase"). The Tenant acknowledges receiving the Notice of Rent Increase on September 1, 2022. Review of the Notice of Rent Increase shows that rent would be increased from \$1,400.00 to \$1,421.00.

The Tenant raises two technical issues with the Notice of Rent Increase. First, it indicates the \$1,400.00 rent was established on January 5, 2021, this despite the \$1,400.00 being first established when the tenancy started. Second, the new rent would be first payable on January 10, 2022. It was argued that this date preceded the date the Notice of Rent Increase was signed and is unenforceable.

Though the Landlord P.B. acknowledges those dates were put into the Notice of Rent Increase incorrectly, he argued that the rent increase ought to have taken effect on December 1, 2022 as this is three-months from when the notice was received. The Landlord argued that the Tenant has not paid the increase and that she still owes him \$400.00 in rent from sometime ago, though neither of these issues are before me in this application.

Analysis

The Tenant seeks an order that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement. Pursuant to s. 62(3) of the *Act*, the director may make any order necessary to give effect to the rights, obligations, and prohibitions under the *Act*, the Regulations, and the tenancy agreement.

I note that based on the description of the Tenant's application, the claim pertains to a disputed rent increase and arguably should have been filed as the same. However, I find that the application is clear on the relief sought such that it is not an issue.

A landlord may impose a rent increase on a tenant pursuant to the process and limits set out under Part 3 of the *Act*. Section 42 of the *Act* sets out the timing and notice requirements for rent increases and states the following:

- 42** (1) 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.
- (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.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

(Underline Added)

In this instance, there is no disputing the Landlord gave the correct form nor is there a dispute with respect to the amount of the rent increase. I note that the \$21.00 increase was in compliance with the 1.5% increased permitted for all rent increases between January 1, 2022 and December 31, 2022. The issues raised by the Tenant is with respect to two dates that were incorrectly inputted into the form by the Landlord.

Looking first at the date upon which the rent was instituted, I accept that this was incorrect. Rent of \$1,400.00 was clearly established when the tenancy started in March 2019. However, I find that this error is not material. It is worth nothing that the *Act* and regulation do not set out form and content requirements for notice of rent increases other than as set out under s. 42 of the *Act*. The date upon which rent was established or the last rent increase imposed set out in the form is simply intended to ensure that the 12 month limitation set by s. 42(1) of the *Act* has been complied with. In this instance, there is no dispute rent has not been increased since the outset of the tenancy such that the timing of the rent increase complies with s. 42(1).

Looking next at the effective date of the notice there is again no question that this is incorrect. Indeed, the effective date set in the Notice of Rent Increase is prior to the date the notice was signed. However, s. 42(4) of the *Act* automatically corrects this error to the earliest date that does comply. In this instance, there is no disputing the Tenant received the Notice of Rent Increase on September 1, 2022 such that the earliest date for the notice to take effect as per ss. 42(1) and 42(2) is December 1, 2022.

Accordingly, I find that the Notice of Rent Increase took effect on December 1, 2022. I decline to grant the Tenant's order under s. 62 of the *Act* as she has failed to demonstrate that the Landlords have acted in breach of the *Act*, tenancy agreement, or the Regulations.

The application is dismissed without leave to reapply.

Conclusion

The Tenant has failed to demonstrate the Landlord acted in breach of the *Act*, Regulation or the tenancy agreement. Her claim under s. 62 of the *Act* is dismissed without leave to reapply.

The Tenant was unsuccessful in her application. I find she is not entitled to her filing fee. Her claim under s. 72 of the *Act* is dismissed without leave to reapply.

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 16, 2023

Residential Tenancy Branch