



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on September 21, 2022 seeking to dispute a rent increase by the Landlord, and for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 7, 2023.

The Tenant was at the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The Landlord did not attend the telephone conference call hearing.

Preliminary Matter – Tenant Notice of Dispute Resolution Proceeding to Landlord

To proceed with this hearing, I must be satisfied that the Tenant made reasonable attempts to serve the Landlord with the Notice of Dispute Resolution for this hearing. This means the Tenant must provide proof that the document has been served using a method allowed under s. 89 of the *Act*, and I must accept that evidence.

The Tenant set out how they served this notice to the Landlord via registered mail on October 7, 2022. This was 2 days after they received the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch on October 5. They were aware that the Landlord had not retrieved their mail from the office at the rental unit property, where the Landlord resides, by December. Evidently, the Landlord responded that they “were not concerned about such mail.” The rental unit property advised the Landlord of their registered mail; eventually, a family member of the Landlord picked up the registered mail from the post office. The Tenant learned of this information from the rental property main office.

Based on the submissions of the tenant, I accept they served the notice of this hearing in a manner complying with s. 89(1)(c) of the *Act*, and I find the Tenant duly served the Landlord with the Notice of Dispute Resolution Proceeding for this hearing. The hearing thus proceeded in the Landlord's absence.

Issue(s) to be Decided

Did the Landlord increase the rent in accordance with s. 41 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant presented that they entered a tenancy agreement with the Landlord for a tenancy starting on November 1, 2016. This is for one float home in a marina. The agreement was verbal, and the Tenant here did not provide any copy of a written tenancy agreement. They agreed to pay \$1,585 as an "all in" rental, with this to be their "forever home". The rent amount includes moorage, cable/internet, water and heat. The Tenant did not pay a security deposit.

The Tenant lives in a float home, and the Landlord lives in a boat at the same marina.

The Tenant currently pays a rent amount of \$1,725. They presented that the Landlord notified them of this rent increase via email on June 15, 2021. The rent increase was applicable for the following month's rent, that is July 2021. The copy of that email was in the Tenant's evidence, subject: July rent: "Just wanted to let you know that your monthly rent/utilities payment will be increasing from its current amount to 1725\$ per month."

The Tenant described bringing their concern about this amount increase to the Landlord; however, the Landlord responded by saying that the Residential Tenancy Branch rules don't apply to this situation.

From this time forward, the Tenant paid the amount of \$1,725 per month. By the Tenant's calculation, this was a rent increase of 8.8% which is beyond the annual rent increase amount as set out in the *Act* and the *Residential Tenancy Act Regulation*.

The Tenant clarified that they applied for this hearing process to rectify the correct amount of rent. They did not know about the Residential Tenancy Branch's jurisdiction in these matters of rent increase until they spoke to contacts who advised them of such. The Tenant also stated their desire to recover the extra amounts of rent they paid from July 2021 through to the present.

Analysis

The *Act* s. 1 provides the definition of "rental unit": living accommodation rented or intended to be rented to a tenant. I find this means that a person could rent a float home under the *Act*. The Tenant presented in the hearing that the *Manufactured Home Park Tenancy Act* explicitly excludes "float homes", leaving this matter under by jurisdiction as set out in the *Act*.

The Tenant presented that they had an agreement in place with the Landlord since 2016, for the provision of monthly rent for the float home. I find, minus evidence to the contrary, that the parties had an agreement in place. I also find, minus evidence to the contrary, that the Tenant paid rent in the amount of \$1,585, until the Landlord imposed an increased rent amount to \$1,725, starting in July 2021.

Concerning the 2021 rent increase brought forward by the Tenant here, the *Act* s. 5 provides that it cannot be avoided:

- (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Part 3 of the *Act* sets out the timing and notice requirements for rent increases. First, s. 41 provides that "A landlord must not increase rent except in accordance with this Part." Following this, s. 42 provides more specifics:

- (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.

To provide for the amount, s. 43 sets out:

- (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 . . . , or
 - (c) agreed to by the tenant in writing.

The Tenant provided evidence that the Landlord unilaterally imposed a rent increase, within two weeks of notifying the Tenant of this, via email, in June 2021. This was not the method or calculation in accordance with the *Act*; therefore, I find the Landlord breached the *Act*. The rent increase, effective immediately, is null and void. From March 2023 forward, the amount of monthly rent shall be the original set rent amount: \$1,585.

The *Act* s. 43(5) also provides that when a landlord collects a rent increase that does not comply with this Part, a tenant may deduct the increase from rent, or otherwise recover the increase.

Based on the Tenant's affirmed testimony, I find they paid the increased rent amount from July 2021 through to February 2023, the date of this hearing.

The increased amount was \$1,725, from the original amount of \$1,585. This is \$140 increased per month. This is a consecutive 20-month period; therefore, the total of overpayment by the Tenant here was \$2,800.

In line with s. 43(5), I order the Tenant to pay rent for the upcoming months as follows, to recover the overpaid amount:

- March 2023 rent: no rent paid, thereby offsetting the balance by \$1,585
- April 2023 rent: partial rent paid, taking the remaining balance of \$1,215 off, meaning the Tenant must pay \$370

As the Tenant was successful in this application, I find the Tenant is entitled to recover the \$100 filing fee they paid for this application. I authorize the Tenant to withhold the amount of \$100 from the April rent payment. This makes March 2023 rent-free for the Tenant, and April rent payment to be \$270 total.

Conclusion

I find the Landlord imposed a rent increase that was not in compliance to what is set out in the *Act*. They shall not accept future payments or make demands for an amount greater than what the original agreement set out. I authorize the Tenant to reduce March and April 2023 rent payable, as set out above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 7, 2023

Residential Tenancy Branch