



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding MAKHIJA HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: DRI, LRE, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The landlord confirmed that there were no issues with service of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with the tenant's application and evidence.

Preliminary Issue: Service of the Landlord's Evidentiary Materials

The landlord provided proof of service to support that they had sent their evidentiary materials to the tenant by way of registered mail on April 17, 2023. The tenant testified that they left the country due to a medical emergency, and therefore was unable to retrieve the package and review the documents prior to the hearing date. In this case, although the landlord did provide proof that they had attempted to serve the tenant with their evidentiary materials, the tenant did not have an opportunity to review the

materials. The landlord was opposed to an adjournment in order to re-serve the tenant with their evidentiary materials.

The landlord provided sworn testimony confirming the submissions made in their written materials, which details the tenant confirmed. As the tenant did not dispute the facts contained in the landlord's evidence, and as I am satisfied that the landlord did serve the tenant in accordance with sections 88 and 90 of the *Act*, the landlord's evidence was admitted and considered for this application.

Issues

Is the tenant entitled to a determination regarding their dispute of an additional rent increase by the landlord?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on February 1, 2021, and continued on a month-to-month basis after January 31, 2022. The landlord holds a security deposit of \$550.00 for this tenancy.

The tenant filed this dispute as they feel that the landlord had imposed multiple rent increases during this tenancy in a manner that did not comply with the *Act*.

Both parties confirmed that the monthly rent was originally set at \$1,100.00, payable on the first of the month. Both parties confirmed that the rent was increased to \$1,150.00 effective January 1, 2022, and increased again to \$1,175.00 effective January 1, 2023. The landlord confirmed that the tenant made rent payments in these amounts, and is currently paying \$1,175.00 per month. A log of the rent payments was provided in evidence by the landlord for this hearing, as well as a copy of the tenancy agreement. The landlord testified that the two parties had a friendly relationship, and that a Notice of Rent Increase Form was never served on the tenant.

The tenant testified that they never consented to these rent increases, and paid the additional amounts in fear that they would be evicted if they failed to pay the amounts requested. The landlord argued that the tenant had consented to these rent increases, as demonstrated by the tenant's payments of the requested amounts.

Analysis

Sections 42 and 43 of the Act address the timing, notice and amount of rent increases permitted by legislation.

Timing and notice of rent increases

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.

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.

Based on the evidence and testimony before me, I find that the tenant was never served with a notice of rent increase in the approved form. Furthermore, I find that the initial rent increase from \$1,100.00 to \$1,150.00 was imposed within the first 11 months of the beginning of this tenancy. I also find that the amounts of the increases exceed the amount allowed under the legislation. Although the landlord argued that the tenant had consented to these rent increases, the tenant did not agree to any increases in writing. I do not find that the evidence supports that the tenant had consented to these rent increases. Although the tenant did pay the additional rent as requested by the landlord, I am not satisfied that the tenant had paid these amounts willingly. I accept the tenant's testimony that they feared eviction if they did not pay the amounts requested, and that the additional payments were made under duress.

To raise the rent above the maximum annual allowable amount, the landlord must have either the tenant's written consent, or an order from an arbitrator. If the tenant agrees to an additional rent increase, the landlord must issue a Notice of Rent Increase along with a copy of the tenant's signed agreement to the additional amount. The tenant must also be given three full months' notice of the increase.

I find that the landlord has failed to comply with the requirements of sections 42 and 43 of the *Act*. I find that both rent increases were imposed in contravention of the *Act*. The monthly rent for this tenancy is hereby reduced to \$1,100.00, the original monthly rent agreed to in the written tenancy agreement. This monthly rent remains in effect until increased in accordance with the *Act*. I order that any future rent increases the landlord wishes to impose must be imposed on accordance with the *Act* and legislation.

Based on the above determination, I find that the tenant is entitled to a monetary award for a refund of the amounts paid during this tenancy that exceeded \$1,100.00 for the period of January 1, 2022 to May 1, 2023 for a total refund of (\$50.00x12 months + \$75.00 x 5 months=\$600.00+375.00) for a total monetary order of \$975.00.

I have considered the tenant's application for an order to suspend or set conditions on the landlord's right to enter the rental unit. I do not find that any further orders are

necessary at this time, and I dismiss this portion of the tenant's application with leave to reapply.

As the tenant's application has merit, I allow the tenant to recover the filing fee paid for this application.

Conclusion

I order that the monthly rent for this tenancy is set at \$1,100.00, until increased in accordance with the *Act*.

The tenant is entitled to a monetary award for the rent increases paid during this tenancy from January 1, 2022 to May 2023 for a total refund of 975.00.

I find that the tenant is also entitled to recover the filing fee for this application.

I allow the tenant to implement a monetary award of \$1,075.00 for the above monetary orders by reducing a future monthly rent payment by that amount until the total monetary award is paid in full. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$1,075.00 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.

The remainder of the tenant's application is dismissed with 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: May 16, 2023

Residential Tenancy Branch