



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding ARDEN PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI-ARI-C, FFT

Introduction

On January 31, 2023, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") to dispute a rent increase, and to recover the filing fee paid for this application. The matter was set for conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Did the Landlord issue a rent increase above the amount allowed by law?
- Is the Tenant entitled to the recovery of the filing fee of their application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on May 1, 2022, as a one-year fixed-term tenancy, starting May 1, 2022. That rent in the amount of \$1,550.00 is due on the first day of each month, and that the parties agreed to a \$350.00 monthly rent reduction for the first year of this tenancy. It was also recorded that the Tenant paid the Landlord a \$775.00 security deposit and a \$250.00 pet damage deposit at the beginning of the tenancy. The Tenant and the Landlord each submitted copies of the tenancy agreement into documentary evidence.

The Tenant testified they received a rent increase notice from the Landlord indicating that their monthly rent would be \$1,581.00 per month as of May 1, 2023. The Landlord submitted a copy of the Notice of rent increase into documentary evidence.

The Tenant agreed that the Notice of rent increase contained a 2% rent increase on the monthly rent amount of \$1,550.00 but submitted that they were not expecting the rent to go back to the original amount of \$1,550.00 per month, as they had hoped to be offered a cheaper unit during the first year of their tenancy. The Tenant submitted that the new rent amount of \$1,550.00 amounted to a rent increase of over 30% after their first year of tenancy.

The Tenant submitted that they originally applied for a different unit but were not able to get that cheaper unit, and that the rent reduction offered by the Landlord for the first year of their tenancy was offered because they could not have the unit they originally applied for.

The Landlord testified that no cheaper units had become available that they could offer the Tenant.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the tenancy agreement signed between these parties, and I noted that this tenancy agreement is for a one-year fixed-term tenancy, starting May 1, 2022, and ending April 30, 2023, for an agreed to monthly rent amount of \$1,550.00, with a \$350.00 rent reduction for the first 12-months.

In this case, the Tenant has submitted that the 12-month rent reduction contained in this tenancy agreement amounts to an illegal rent increase at the end of the 12-month period. Section 42 of the *Act* states the following regarding rent increases:

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.

After reviewing this tenancy agreement, I find that the rent payment clause contained in section 7 of this tenancy agreement, provides for a 12-month rent discount for the first year of this tenancy and that the return to the original rent amount contracted to between these parties, at the end of the discounted term, does not equate to a rent increase as defined under the *Act*.

Accordingly, I find that there was no breach of section 42 of the *Act* by the Landlord when they contracted to a one-year rent reduction of \$350.00 for the first year of this tenancy. Consequently, I dismiss the Tenant's claim in its entirety, as they have failed to prove a breach of the *Act* by the Landlords on this matter.

In addition, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Tenant's application in its entirety.

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 25, 2023

Residential Tenancy Branch