



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes DRI, LRE, LAT, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on May 25, 2023. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant's application and evidence package, and did not take issue with service of those documents. The Landlord did not submit any documentary evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me, I determined that the most pressing and related issues deal with the Tenant's request to dispute a rent increase. As a result, I

exercise my discretion to dismiss all of the grounds on the Tenant's application, with leave to reapply, with the exception of the following claim:

- I want to dispute a rent increase that is above the amount allowed by law

I decline to consider the Tenant's request to change the locks.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order due to an unlawful rent increase?

Background and Evidence

The Tenant stated that he is seeking to dispute his 2022 and 2023 rent increase, as they were not lawful.

The Tenant stated that in 2021, his rent was \$750.00, and at the end of December 2021, he received a verbal rent increase from the Landlord to increase rent to \$770.00 as of the start of January 2022. The Tenant stated he paid this amount, and has since that time. Then, the Tenant stated that he received another rent increase at the end of December 2022, except this time it was on a proper rent increase form. However, the rent increase was beyond the allowable amount, as the Landlord wanted to increase rent from \$770.00 to \$820.00 as of January 1, 2023. The Tenant stated that he did not pay this increased amount and only continued to pay his \$770.00 amount.

The Landlord explained that she increased the rent as noted above because she believed the Tenant is using too much electricity to power his air conditioner unit. The Landlord also stated that she sent a text message to the Tenant in early 2023, stating she only wanted a rent increase of \$15.00, not \$50.00.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

I turn to the Tenant's application to recover rent that was overpaid due to an unlawful rent increase.

Part 3 of the Act and Policy Guideline 37 to the Act explain the requirements a landlord has to follow in order to affect a legal rent increase.

I note the following portions of the Act:

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.

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.

[...]

(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.

I note the Landlord only provided a verbal rent increase to the Tenant at the end of 2021, and it does not appear any proper written notice, on the approved form, was given to the Tenant at that time. I do not find a verbal notice of rent increase is sufficient for this part of the Act, and although the Tenant paid the rent increase, I do not find this equates to consent to the increase. There is no evidence this rent increase was agreed to in writing, and I find it has not been affected in accordance with the Act. I do not find a verbal agreement, and subsequent payment of the increased amount is sufficient to make this a lawful rent increase. I find the rent increase from \$750.00 to \$770.00 as of January 1, 2022, was unlawful and I find the Tenant is entitled to recover the rent overpayments made since that time.

The Tenant is entitled to recover rent overpayments of \$20.00 per month x 17 months (January 2022 – May 2023). This amounts to \$340.00 total.

Further, the most recent increase, issued for January 1, 2023, is also unlawful, as it was well above the allowable 2% rent increase for 2023. I hereby cancel both rent increases, the one for 2022, and the one for 2023. I note the Tenant has not paid the 2023 rent increase.

Current rent is \$750.00 and will remain as such until rent is increased lawfully.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I find the Tenant is entitled to a monetary order as follows:

- \$340.00 for an unlawful rent increase
- \$100.00 for the cost of the filing fee
- Total: \$440.00

The Tenant may deduct \$440.00 from one future rent payment.

Conclusion

The rent increases are cancelled and the Tenant may deduct rent overpayments from one future rent payment.

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 29, 2023

Residential Tenancy Branch