



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, DRI, FFT

The Tenant filed an Application for Dispute Resolution on May 11, 2023 seeking:

- cancellation of the Two-Month Notice to End Tenancy for Landlord's Use (the "Two-Month Notice") served by the Landlord on May 1, 2023'
- to dispute a rent increase that is above the amount allowed by law
- reimbursement of the Application filing fee.

The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on August 31, 2023. Both the Landlord and the Tenant attended the hearing. In the conference call hearing I explained the process and provided both the Landlord and the Tenant the opportunity to ask questions.

Preliminary Matter – tenancy ended

The Tenant provided that they moved out from the rental unit on June 30, 2023.

Given that the tenancy ended, and the Tenant moved out on their own volition, I find the validity of the Two-Month Notice is not at issue. I dismiss this issue from the Tenant's Application, without leave to reapply.

Issues to be Decided

Did the Landlord increase the rent in accordance with s. 43 of the *Act*?

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

Background and Evidence

Reviewing the tenancy agreement they had with the Landlord, the Tenant described paying \$1,700 when they first moved into the rental unit property. The Landlord then added one more room in the downstairs part of the rental unit property, adding another \$350 to rent. The rent at the start of the tenancy in 2012 was \$2,050, and the Tenant agreed to this amount as shown in the image of the tenancy agreement they sent as evidence.

The Landlord confirmed these background details as true.

The Tenant then presented that they paid \$2,200 onwards from January 2021. They recalled the Landlord telling the Tenant that this was the amount that the Landlord themselves had to pay. The Tenant discovered this was wrong, based on a discussion with a friend who is familiar with tenancy matters. That friend explained to the Tenant that a rent increase “must follow a percentage rule”.

The Landlord stated they mentioned the subject of rent increase to the Tenant in the past, paraphrasing their words on that discussion as “we were just thinking . . .”. The Landlord submitted it was the Tenant who proposed \$2,200 for the rent amount, and the Landlord accepted that. The Landlord accepted this amount as rent from the Tenant going forward.

The Landlord submitted it was “very ironic” that the Tenant had been paying this amount of \$2,200 per month for the past approximately 2.5 years. The Landlord recalled it was the Tenant who put this amount forward.

Analysis

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. 41 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 under subsection (3)

(c) agreed to by the tenant in writing.

In the hearing, both parties confirmed that the Landlord accepted the amount of \$2,200 since January 2021. The Tenant provided that this was ongoing, and the Landlord confirmed that detail. I find the Landlord did not impose a rent increase as set out in s. 43; rather, I find the Tenant voluntarily paid this increased amount of rent from January 2021 onwards.

Because 2.5 years passed with the Tenant not raising any concern of this rent amount to the Landlord, I find it unreasonable that the Tenant would raise this as an issue after this time had passed. That runs

counter to their payments of this rent amount, without protest or attempting to resolve the matter. I find the Landlord has the right to reply upon the actions of the Tenant – those which had not changed for 2.5 years – that the rent amount was \$2,200. I find the Tenant was willing to pay this amount of rent for this period of time; therefore, the legal principle of estoppel applies: an assertion that contradicts previous actions cannot be relied upon for some form of relief.

Additionally, the Tenant did not provide a total proof of payment over the whole course of the 2.5-year time period. There would be no compensation to the Tenant for this reason, aside from my decision that the Landlord did not breach the *Act*.

The Tenant was not successful in this Application; therefore, I grant no reimbursement of the Application filing fee.

Conclusion

I find the Landlord did not impose an illegal rent increase. I grant no reimbursement to the Tenant for the Application filing fee.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 8, 2023

Residential Tenancy Branch