



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI, FF, O

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The landlord seeks an additional rent increase. The tenant disputes this additional rent increase and seeks to recover the filing fee for her application and other issues.

The landlord and tenant both served each other with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave their testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to raise the rent above the amount allowed under the Act?
- Has the tenant provided sufficient evidence to dispute an additional rent increase?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?
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Background and Evidence

This tenancy started on October 01, 2000. The tenant rents an upstairs suite for the monthly rent of \$980.00 and an additional amount of \$27.00 for her cable use. The tenant paid a security deposit of \$450.00 on October 01, 2000.



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The landlord has applied for an additional rent increase above the 3.7% allowed for 2009. The landlord claims that the suite is under the market rate for rent in the area and has provided classified advertisements from a local newspaper detailing other properties. The landlord claims other properties he owns in the same area pay rental costs of \$1,250.00. The landlord seeks a rent increase of 30.7 % which would increase the tenants rent from \$980.00 to \$1,280.86. The landlord states that the cable costs have also increased by \$12.00 this year.

The tenant disputes this additional rent increase she states that the properties from the classified advertisements are not comparable as they are not in the same area as the tenants' suite and have different facilities and amenities. Some of the properties are for a whole house not just the upstairs portion as the tenant rents. The tenant disputes the landlords claim about his other properties being comparable as one of the properties is the basement suite to her home and this rent was increased from \$975.00 to \$1250.00 when the landlord re-rented it to new tenants who agreed to pay this amount.

The tenant claims the landlord increased the rent in March 2008 by 2.5 times the amount allowed but she did agree to this increase at the time. She finds the recent increase over and above what is a fair amount due to the comparable rents in the area and the ongoing problems with repairs to items in the suite. The tenant states the landlord does not always meet his obligations as a landlord with regard to repairs and she has had problems with the electrical panel being located in the basement suite and the furnace not working correctly.

The tenant is willing to pay a rent increase in line with the fair amount allowed for 2009.

Analysis

The Residential Tenancy Regulations # 23 state that a landlord may apply for an additional rent increase if he can provide evidence that the rent for the rental unit is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area, as the rental unit. I have considered the landlords application and the evidence provided including the submissions made at today's hearing. I find the landlord has not provided sufficient evidence of



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comparable properties with higher rent in the same geographical area with the exception of the landlords own properties. However, as the tenant has stated the rent for the landlords' basement suite has been recently increased due to new tenants moving in to the property.

The regulations also state that I may consider the rent history for the rental unit and find that the landlord increased the rent by 2.5 times in 2008 above the allowable amount of 3.7 %.

The regulations also state that I may consider whether or not the landlord has complied with section 32 of the *Act* with regards to repairs to the rental property. I find the landlord has not fully complied with section 32 of the *Act* with regard to maintenance or repairs to the furnace and this has caused discomfort to the tenants during the winter months. Section 32 of the *Act* states:

- 32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Due to the above I find the landlords' application for an additional rent increase is dismissed.

The tenants application is upheld and the landlord is only able to increase the rent by 3.7% pursuant to section 43(1)(a) of the *Act*. Therefore I find the landlord may increase the tenants rent by \$36.26 to an amount of \$1,016.26. The landlord may increase the additional cable costs in agreement with the tenant upon providing her with a bill showing these additional costs.

Conclusion

I HEREBY FIND in favor of the tenants' application. The landlords' application for an additional rent increase is dismissed without leave to reapply.



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I further Order, that the landlord bear the cost of the filing fee paid for this hearing. The tenant may therefore deduct \$50.00 from future rent payable to the landlord

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: October 28, 2009.

Dispute Resolution Officer