



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a rental increase. The hearing was conducted via teleconference and was attended by the tenant and the landlord.

While the parties had raised a number of issues in their evidentiary submissions I advised both parties that I would not be considering any of the items unless they were directly related to the Notice of Rent Increase dated June 30, 2013, with the exception of the landlord's evidence supporting an additional rent increase. On the matter of an additional rent increase I advised the landlord to contact the Residential Tenancy Branch (RTB) to discuss how to apply for such an increase.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to disregard a Notice of Rent Increase and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 42, 43, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the parties on April 9, 2009 for an 11 month and 16 day fixed term tenancy beginning on April 15, 2013 that converted to a month to month tenancy on April 1, 2010 for a monthly rent of \$1,150.00 due on the 1st of each month.

The tenant also provided a copy of a Notice of Rent Increase dated June 30, 2013 with an effective date of October 1, 2013 indicating rent would increase by \$65.00. The tenant submits this is a rent increase of 5.7%. The tenant also submits that because her tenancy began on April 15, 2009 the effective date must be the same as the start date of the tenancy.

The landlord has submitted into evidence, among other things, another Notice of Rent Increase dated July 22, 2013 with an effective date of November 1, 2013 indicating rent

would increase by \$43.00. The landlord acknowledges that the original Notice dated June 30, 2013 was incorrect and that she had sought such an increase in capital spending on the property and to bring it in line with other rental properties.

Analysis

Section 42 of the *Act* stipulates a landlord must not impose a rent increase for at least 12 months after the date on which the tenant's rent was first established under the tenancy agreement, if the rent had not been increased before or if it had been increased previously the effective date of the last rent increase.

As the parties agree there has been no rent increase since the rent was first established and the tenancy began in 2009 the landlord is at liberty to increase the rent for this tenancy on any date as long as the proper notice has been given at least 3 months before the effective date of the increase. I find there is nothing in the *Act* that restricts the landlord to an effective date for a rent increase to the start of a tenancy.

Section 43 of the *Act* stipulates that the amount of a rent increase must comply with the regulations unless a landlord has received approval through applying for an additional rent increase in accordance with the regulations. Each year the RTB publishes the annual allowable rent increase rate as calculated pursuant to the regulations and for 2013 that rate is 3.8%.

As the rent increase in the Notice of Rent Increase dated June 30, 2013 was for 5.7% I find the Notice is invalid because it increases the rent beyond the allowable rate for 2013 and the landlord has not filed an Application seeking an additional rent increase.

Conclusion

I order the Notice of Rent Increase issued on June 30, 2013 to be cancelled. I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment, pursuant to Section 72(2)(a).

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: August 02, 2013

Residential Tenancy Branch