



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, RP

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on March 21, 2021 seeking to dispute a rent increase by the landlord, and to ensure repairs are undertaken by the landlord after the tenant’s written request. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 17, 2021.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the start of the hearing, the tenant confirmed they provided no documents as evidence in advance. The landlord stated they provided their three prepared documents to the tenant one day prior to the scheduled hearing date. The tenant confirmed they received the same.

Issue(s) to be Decided

Did the landlord increase the rent in accordance with s. 41 of the *Act*?

Is the landlord obligated to make repairs to the rental unit, after being contacted by the tenant in writing, pursuant to s. 32 of the *Act*?

Background and Evidence

The parties confirmed they entered the original tenancy agreement on September 15, 2018. The amount of rent at that time was \$1,600, with the tenant paying the \$800 security deposit.

The tenant made their Application to dispute a rent increase by the landlord. They provide the landlord increased the amount of rent to \$2,200. Their statement on the Application is: "He says he can't afford to have this place without that much money."

In the hearing the tenant provided that they paid this amount of rent to the landlord on one occasion in the past. In late 2020 the landlord stated they were making this increase; however, the tenant informed the landlord that rent could only be increased by 4%. They received no document from the landlord that showed the rent was increasing. The tenant – along with their roommates – have only been making payments towards each months' rent as and when they are able to do so.

The tenant also stated they would be agreeable to an increase in rent if the landlord would make needed repairs to the unit. The example they gave in the hearing was that one-half of the rental unit is without electricity. As stated: "I don't mind paying extra if things were fixed." They had previously told this to the landlord.

The landlord confirmed that they did inform the tenant that rent had to increase. This was because of 8 or 9 people who were living at the rental unit address, including the backyard, in early 2020. The landlord accepted an amount of \$2,200 from the tenant twice in the past year. After this, the tenant has paid only partial payments throughout the past year. The landlord confirmed in the hearing that the rent increase was not provided to the tenant in writing.

The landlord reiterated that they had no choice but to increase the rent based on the variability of the number of people living at the rental unit address. The bylaw officers and police both stated concerns about this issue, and really the landlord wants their property vacant because of these ongoing issues.

The landlord responded to the tenant's claims regarding repairs to the rental unit to say they sent an electrician to the unit to make repairs in the past. This was on a smaller scale than what the tenant describes in the present hearing, which makes no sense. As

the landlord stated in their understanding of this in the hearing: “how can anyone live for 5 or 6 months with no lights?”

Analysis

The *Act* s. 5 provides that it cannot be avoided:

- (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

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. 42 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,
 - ...
 - (c) agreed to by the tenant in writing.

In the hearing, both parties confirmed that the landlord accepted an increased amount of rent. The tenant provides this happened only once; the landlord stated it was twice. Regardless of the number of payments which the landlord accepted at an increased amount of rent, I find the landlord imposed an increase in rent without following the relevant sections of the *Act*, set out above. Further, the landlord accepted this increased rent amount on at least one occasion. The tenant did not provide proof of payment, and did not give the exact month when they made this full increased payment.

I find the tenant has somewhat acquiesced to this increased rent payment; however, this remains contingent on the provision of repairs to the rental unit. I find the tenant accepting any arrangement for increased rent amounts to avoiding or making an agreement that falls outside of the *Act*, thereby violating s. 5. The tenant brought this Application to dispute that imposed increase and here is successful; however, in the

future this *Act* cannot be avoided. If the tenant agrees to an increased amount of rent, this agreement must be in writing.

Any future payment of a higher amount of rent than what the original tenancy agreement provided for will constitute a breach of the *Act*. For that, the tenant will have the right to claim monetary compensation. Because the tenant did not present clear evidence that a payment was made – and there is conflicting information on whether it was on more than one occasion – I make no award for compensation. The tenant may apply for monetary compensation separately or deduct the increase from future rent if they provide ample evidence of an increased rent payment.

In summary on this issue, the landlord must stop asking for an increased amount of rent that is not set out in a formal written agreement, or in compliance with s. 42. They must stop accepting increased rent payments, even if repairs are completed to the tenant's satisfaction and the tenant agrees to pay an increased amount. Both parties must comply with the *Act*.

The *Act* s. 32 governs a landlord's obligation to maintain the rental unit "in a state of . . . repair that . . . complies with the health, safety and housing standards required by law."

The tenant presented that there were repairs made to the unit; however, as of the date of the hearing they presented that these repairs are not sufficient. I find the landlord was not aware of the current state of the rental unit – apparently this is with half the rental unit without power. Both parties provided their version of repairs that were undertaken for electricity in the rental unit; however, there are issues remaining.

I find the tenant did not advise the landlord of repairs needed to the rental unit prior to their Application for this hearing. I order the tenant shall make a formal written request to the landlord for needed repairs. In line with this, I remind the landlord that responsibilities for repair are set out in s. 32 of the *Act*.

Though not directly related to this hearing, the landlord presented that there are a number of issues with the number of people occupying the rental unit property. I find the landlord is having difficulty managing this effectively and in line with the *Act*. This is causing separate issues with illegal activity and bylaw compliance. I strongly urge the landlord to seek advice on other issues with the rental unit so that they may pursue proper legal ways in which to manage these issues that are clearly problematic. This may entail ending the tenancy; however, the landlord must do so in a manner that complies with Part 4 of the *Act*.

Conclusion

I find the landlord did impose a rent increase that was not in compliance to what is set out in the *Act*. They shall not accept future payments or make demands for an amount greater than what the original agreement set out.

Reciprocally, the tenant shall properly advise the landlord of needed repairs in order for the landlord to complete repairs in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 22, 2021

Residential Tenancy Branch