



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT, CNR

Introduction

This hearing was convened in response to an application and an amended application dated February 15, 2022 by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. Ann Order for the Landlord’s compliance - Section 62;
2. An Order cancelling a notice to end tenancy - Section 46; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the original application for dispute resolution, notice of hearing and evidence (the “Hearing Package”) in person on January 17, 2022 in accordance with Section 89 of the Act. The Tenants did not serve the Landlord with its amended application. The amended application set out the claim to cancel a notice to end tenancy for unpaid rent. As the amended application was not served on the Landlord, I dismiss this claim with leave to reapply. Leave to reapply is not an extension of any applicable limitation period. The Tenants were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to an order that the Landlord comply?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on July 1, 2019. Rent of \$2,000.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,000.00 as a security deposit. In September 2021 the Landlord informed the Tenants by email that the rent would increase by an additional \$200.00. In October 2021 the Landlord verbally informed the Tenants that the rent would increase by an additional \$400.00 effective January 1, 2022. The Tenants have not paid any of the requested rent increases.

Analysis

Section 42 of the Act provides as follows:

- (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.

Section 43 of the Act provides as follows:

- (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.
- (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(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.

Based on the Tenant's undisputed evidence that the Landlord did not give the Tenants written notice of a rent increase on the approved form and in an amount allowed under the Act, I find that the Landlord is not in compliance with the Act. I therefore order the Landlord to immediately cease requesting a rent increase without acting in accordance with the Act. Should the Landlord fail to act as ordered the Tenants have leave to reapply for compensation.

As the Tenants' claim has been successful, I find that the Tenants are entitled to recovery of the \$100.00 filing fee and the Tenants may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

The Landlord is ordered to comply with the rent increase sections of the Act.

I grant the Tenants an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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

Dated: March 17, 2022

Residential Tenancy Branch