



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on December 21, 2022 (the "Application"). The Tenants applied to dispute a rent increase, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenants and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised relating to service, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the Landlord's Notice of Rent Increase, pursuant to Section 42, 43 of the *Act*?

Background and Evidence

The parties testified and agreed to the following: the tenancy began on June 1, 2019. Currently, the Tenants are required to pay rent in the amount of \$1,522.50 which is due to be paid to the Landlord on the first day of each month. The Tenants paid a security

deposit in the amount of \$750.00 which the Landlord continues to hold. The Tenants continue to occupy the rental unit.

The parties agreed that the Landlord served the Tenants with a Notice of Rent Increase dated September 2, 2022 which increased the rent above the allowable amount. The parties agreed that the Landlord amended the Notice of Rent Increase on October 15, 2022 by completing a new Notice of Rent Increase dated October 15, 2022, increasing the rent by \$30.45 from \$1,522.50 to \$1,552.95. The Tenants confirmed having received the second Notice of Rent Increase on October 15, 2022.

The Tenants are disputing the October 15, 2022 Notice of Rent Increase given it has an effective date of January 1, 2023. The Tenants stated that the Notice of Rent Increase does not comply with the requirement of providing the Tenants with three months notice prior to the rent increase payable date. The Tenants stated that the Notice of Rent Increase should be effective on February 1, 2023 instead.

The Landlord stated that the October 15, 2022 Notice of Rent Increase was just a correction from when the first Notice of Rent Increase was served. As such, the Tenants were provided with sufficient Notice.

The parties agreed that the Landlord has since served a third Notice of Rent Increase which took effect on April 1, 2023. The Tenants stated that the third Notice of Rent Increase complies with the Act. The Landlord is seeking to enforce the second Notice of Rent Increase which the Tenants are disputing.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 42 of the *Act* outlines the allowable timing and notice of rent increases;

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* outlined the allowable amount of rent increase;

A landlord may impose a rent increase only up to the amount that is calculated in accordance with the Regulations, ordered by the Director, or agreed to by the tenant in writing.

In this case I accept that the parties agreed that the first Notice of Rent Increase dated September 2, 2022 was not valid as it was above the allowable amount that the Landlord is permitted to raise the rent. I accept that the parties agreed that the first Notice of Rent Increase is of no effect.

While the Landlord served a new Notice of Rent Increase on October 15, 2022 which states it was amended, I find that the October 15, 2022 Notice of Rent Increase is a new Notice which replaces the first Notice of Increase. I find that the Landlord is not permitted to amend the first Notice of Rent Increase with a second Notice of Rent Increase while still relying on the service date of the first Notice of Rent Increase.

As such, I find that the Landlord would have been required to provide the Tenants with three months notice of such rent increase. I accept that the Tenants received the second Notice of Rent Increase on October 15, 2022. As rent is due on the first day of each month, I find that the effective payable date of the Notice of Rent Increase dated October 15, 2022 should be no earlier than February 1, 2023.

As the payable date on the October 15, 2022 Notice of Rent Increase is January 1, 2023 I find that the rent increase issued by the Landlord to the Tenants does not comply with Section 42(2) of the *Act*. I find that the Tenants were successful in their Application and I therefore set aside the October 15, 2022 Notice of Rent Increase.

Conclusion

The Tenants' Application is successful. The Landlord breached the Act by increasing the rent in a manner that does not comply with Section 42(2) of the Act. The October 15, 2022 Notice of Rent Increase is set aside.

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: April 27, 2023

Residential Tenancy Branch