



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FFT

Introduction

This hearing dealt with a tenant's application to dispute an unlawful rent increase. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the tenant served his Application for Dispute Resolution upon the landlord. I heard consistent testimony from both parties that the landlord presented her rebuttal evidence to the tenant, in person, but he refused to take it from her. I was satisfied the landlord met her obligation to serve the tenant with her rebuttal evidence and that he does not have it because of his own decision to refuse to accept it so I admitted the landlord's rebuttal evidence and I have reviewed it in making this decision.

Issue(s) to be Decided

Has the tenant established that he has paid an unlawful rent increase? If so, what is the monthly rent and how much is the tenant entitled to recover?

Background and Evidence

The parties provided consistent testimony that the parties entered into an oral tenancy agreement in 2014 requiring the tenant to pay rent of \$700.00 on the first day of every month and a security deposit of \$350.00.

On July 1, 2017 the landlords issued a letter to the tenant informing him that starting October 1, 2017 the monthly rent was increasing to \$800.00 due to increased costs associated to property taxes and hydro.

On May 6, 2019 the landlords issued to the tenant indicating they had requested the rent increase to \$1000.00 on January 1, 2019 due to increased property taxes, water and hydro costs but that he did not pay that increase so "to help you out" the rent was increasing to \$900.00 per month starting June 1, 2019; then increasing to \$1000.00 per month starting January 1, 2020 and every year thereafter rent would increase by another \$100.00 per month.

It was undisputed that the tenant was not served with a Notice of Rent Increase in the approved form.

The tenant testified that he started paying \$800.00 per month as of October 1, 2017 and \$900.00 per month starting January 1, 2019 and then he paid \$765.00 for January 2020 and \$850.00 for February 2020, March 2020 and April 2020. The landlord did not dispute these amounts as put forth by the tenant during the hearing.

The parties provided consistent testimony that in February 2020 the landlord indicated that was agreeable to accepting \$850.00 from the tenant.

The tenant stated that he has performed his own calculations as to what his monthly rent should be if the landlord applied the annual allowable rent increase and he calculated that his monthly rent should be \$763.30. The tenant did not provide his calculations to the Residential Tenancy Branch for me to review; however, he provided them to the landlord.

The landlord stated the tenant's calculations were inaccurate and she performed her own calculations and she determined that his rent would be \$837.39 if all of the annual allowable rent increases were applied every year after the tenancy started. The landlord stated that in addition to rent, the tenant has been provided free use of storage space which has a value of approximately \$35.00 per month or \$2310.00 for the duration of the tenancy and that if you take into account the free storage the tenant has been underpaying rent. The landlord provided her calculations for my review.

The landlord submitted that in addition to the free storage, the tenant has also added more people to his household and market rent is substantially higher than what he is paying. The landlord also stated that the tenant had orally agreed to the rent increase to \$900.00.

The tenant requested that I make a determination as to the amount of rent the tenant should be paying and that he recover the amounts paid in excess.

Analysis

Section 13 of the Act requires that a landlord prepare a written tenancy agreement reflecting the parties' agreed upon terms, including: the amount of rent payable; the services or facilities that are to be provided by the landlord and included in the rent; whether the rent varies depending on the number of occupants and if so the amount of the variance; among other things.

The landlords did not prepare a written tenancy agreement at the start of the tenancy; however, both parties provided consistent testimony, which I accept, that when the tenancy started in 2014 the monthly rent was set at \$700.00 per month.

In order to increase rent, a landlord must do so in a manner that complies with Part 3 (sections 40 through 43) of the Act. Below, I have reproduced this part of the Act:

Part 3 — What Rent Increases Are Allowed

Meaning of "rent increase"

40 In this Part, "rent increase" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (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 ***[Notice of Rent Increase]***.
- (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.

Amount of rent increase

- 43** (1) A landlord may impose a rent increase only up to the amount
- (a) calculated in accordance with the regulations ***["allowable annual rent increase"]***,
 - (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.

[My emphasis underlined and terminology added in bold italics]

As seen above, the Act permits a landlord to increase the rent up to once per year but this must be accomplished by giving the tenant a Notice of Rent Increase in the approved form, with at least three full months of advance notice. The amount of the rent increase is limited to the allowable “annual rent increase” which is a percentage calculated every year based on the formula set out in section 22 of the Residential Tenancy Regulations (and provided on the Residential Tenancy Branch website), or the amount agreed to by the tenant in writing, or the amount authorized by the Director in response to a Landlord’s *Application for an Additional Rent Increase*.

Section 43(5) further provides that where a tenant pays an unlawful rent increase, the tenant is entitled to recover the overpayments by withholding rent otherwise payable.

In an attempt to justify the rent increases, the landlord made several statements which I analyze below.

The landlord stated that the tenant had brought additional occupants into the rental unit after the tenancy started. A tenant’s rent obligation may increase to reflect additional occupants and this is not considered a “rent increase” under section 40 of the Act; however, as provided under section 40, such an increased obligation must be reflected in the tenancy agreement in accordance with section 13(2)(f)(iv) of the Act. I was provided no evidence to suggest the parties agreed to such a term in 2014. Also, when I look at the letters the landlord issued on July 1, 2017 and May 6, 2019 the landlord describes increased property taxes and utilities as being the reason for increasing the rent, without any indication is reflects their agreement to increase the rent for each additional occupant. Therefore, I find I am unsatisfied that when the tenancy formed in 2014 the parties had agreed upon a term that each additional occupant would require the tenant to pay a specific amount of additional rent.

The landlord submitted that the market rent for the unit is much greater than what the tenant is required to pay. While that statement was not disputed, it is not relevant in determining whether the landlord increased the rent in a manner that complies with the Act.

The landlord submitted that the tenant has been provided use of storage space, without charge throughout the tenancy. Under section 7 of the Residential Tenancy Regulations, the landlord may charge the tenant a fee for a service or facility requested by the tenant that was not included as part of the tenancy agreement. While it was undisputed that the tenant has been provided use of storage space, without charge, providing of storage space was not the landlord’s reason for charging the tenant more

money in 2017, 2019 and 2020. When I look at the letters the landlord issued on July 1, 2017 and May 6, 2019 the landlord describes increased property taxes and utilities as being the reason for increasing the rent, without any indication is reflects a fee for providing the tenant use of storage space. Therefore, I find this position irrelevant to determining whether the landlord increased the rent lawfully.

With respect to the landlord's argument that the tenant agreed to pay the rent increases orally, I point the parties to Residential Tenancy Branch Policy Guideline 37: *Rent Increases* (Part D.) which provides policy statements and information concerning this position. Below, I have reproduced the relevant portion:

D. TENANT MAY AGREE TO A RENT INCREASE GREATER THAN THE MAXIMUM ALLOWABLE PERCENTAGE AMOUNT

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases (section 42 of the Act). The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

The tenant did not provide the landlord with any written agreement to increase the rent and as stated in the policy guideline, paying the rent increase does not constitute written agreement to an increase of that amount. Therefore, I reject the landlord's position that the tenant had orally agreed to the rent increases as being an enforceable since parties cannot agree to violate or contract outside of the Act, as provided in section 5 of the Act. Section 5 provides as follows:

This Act cannot be avoided

- 5 (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

Having found the landlord did not have the tenant's written consent to increase the rent by more than the allowable annual rent increase and it was undisputed that the landlord did not serve the tenant with a Notice of Rent Increase in the approved form, I find the landlord did not increase the rent in a manner that complies with Part 3 of the Act. Therefore, **I find the lawful amount of rent payable by the tenant is \$700.00 per month based on their tenancy agreement and it shall remain no greater than \$700.00 per month until such time it is lawfully increased in accordance with Part 3 of the Act, or the parties re-negotiate their terms of tenancy and enter into a new tenancy agreement, in writing, by mutual consent.**

I further order that any amount paid in excess of \$700.00 during this tenancy is recoverable by the tenant by withholding rent otherwise payable. I strongly suggest to the tenant that in withholding rent or making deductions from rent to recover the overpayment, the tenant provide the landlord with a written statement as to the deduction he is making from rent to recover the rent overpayments. In making these deductions for overpaid rent, the landlord cannot consider the rent unpaid or issue a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant.

I have not calculated the sum of the overpayments; nor, do I provide the tenant with a Monetary Order with this decision that reflects the sum of overpayments, since the tenant's oral testimony as to the rent payments he has made during his tenancy were not entirely consistent with the landlord's written evidence. I note that the tenant had testified that he started paying \$900.00 per month as of January 1, 2019 but that statement is inconsistent with the landlord's letter of May 6, 2019. I also note that the tenant's testimony as to the amounts he paid for January 2020 and February 2020 were inconsistent with the landlord's letter of March 2, 2020. Therefore, I leave it upon the parties to review their records and determine how much rent the tenant has actually paid each month and determine the amount in excess of \$700.00 per month throughout this tenancy.

I find the tenant's application had merit and I award the tenant recovery of the \$100.00 filing fee. I provide the tenant with a Monetary Order in the amount of \$100.00 for

recovery of the filing fee. To satisfy the Monetary Order the tenant is authorized to deduct this amount from rent otherwise payable.

Conclusion

I have ordered that the rent \$700.00 per month and it shall remain no greater than \$700.00 per month until such time it legally increases or changes in a manner that complies with the Residential Tenancy Act and Residential Tenancy Regulations.

The tenant has overpaid rent, although the sum of overpayments was not determinable by me based on the evidence before me. The parties are to review their records and determine the sum of the overpayments and the tenant is authorized to withhold or make deductions from rent otherwise payable until such time the overpayments have been recovered.

The tenant is awarded recovery of the \$100.00 filing fee and is provided a Monetary Order for this amount which may be satisfied by deducting this amount from rent otherwise payable.

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 24, 2020

Residential Tenancy Branch