



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OLC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution requesting the landlord comply with the Act, regulations or tenancy agreement. The tenants were also requesting recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

Issue(s) to be Decided

1. Whether the landlord has complied with the requirements of the Act with respect to issuing a letter requiring the tenants to pay a rent increase.
2. The affect of the landlord's letter upon the tenants.
3. Award of the filing fee.

Background and Evidence

I heard undisputed testimony that the tenants are currently paying rent of \$640.00 per month. On December 31, 2008 the landlord placed a letter in the tenants' mailbox to inform them that their rent would be increasing 3.7% effective April 1, 2009 and the tenants would also be required to pay a Building Services surcharge of \$100.00 per month.

The tenants have filed this dispute as they are of the position that the letter is not in the approved form and takes effect less than 3 months after they received the letter. The

tenants also object to the landlord charging a Building Services surcharge. The tenants provided a copy of the letter as evidence for the hearing.

The landlord confirmed that the letter provided as evidence for the hearing is the letter served upon the tenants. The landlord was of the position that the formal letter is sufficient notice for a rent increase. The landlord was of the position that the Building Services surcharge does not constitute rent and is not restricted to the 3.7% limit on rent increases.

Neither party provided a copy of the tenancy agreement as evidence for the hearing.

Analysis

Section 42(3) of the Act provides that a notice of rent increase must be in the approved form. The approved form is called *Notice of Rent Increase – Residential Rental Units* (RTB-7) and is provided by the Residential Tenancy Branch. The approved form is available on-line at www.rto.gov.bc.ca or for pick up from the Residential Tenancy Branch offices or at Access BC offices. The Act does not provide me any discretion to find that a formal letter may be served in lieu of the approved form. Therefore, I find that the landlord did not comply with the requirement to serve a notice of rent increase in the approved form and the letter dated December 31, 2008 is of no affect upon the tenants.

As I have found that the letter of December 31, 2008 is of no affect upon the tenants there is no need for me to make any determination concerning the Building Services surcharge provided in the letter. However, the landlord was strongly cautioned that charging tenants a Building Services surcharge may violate the provisions of the Act, regulations or tenancy agreement. The landlord was informed that additional information concerning rent increases is available through the Residential Tenancy Branch either in-person, by telephone, or on-line.

As information for the parties, I referred to sections 41 through 43 of the Act and sections 22 and 23 of the Residential Tenancy Regulations during the hearing. I also made reference to Residential Tenancy Policy Guideline 37: *Rent Increases*.

As the tenants filed this application in response to the landlord's non-compliant notice of rent increase, the landlord must compensate the tenants for the cost of this application. The tenants are, hereby, authorized to reduce a subsequent month's rent by a one-time deduction of \$50.00. Alternatively, the landlord must repay the tenants \$50.00 within 30 days of this decision.

Conclusion

The landlord's letter of December 31, 2008 does not comply with the requirements of the Act and is of no affect on the tenants.

The tenants are awarded the filing fee paid for this application and the tenants may reduce their subsequent month's rent by a one-time deduction of \$50.00 in satisfaction of this award.

February 4, 2009

Date of Decision

Dispute Resolution Officer