



Dispute Resolution Services

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

Decision

Dispute Codes: DRI, MNDC, O, FF

Introduction

This hearing dealt with the tenant's application to dispute an additional rent increase, a monetary order as compensation for loss, an order directing the landlord to make repairs, and recovery of the filing fee for this application. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to any or all of the above

Background and Evidence

Three residential tenancy agreements have been signed by the parties, as follows:

July 26, 2006 to August 31, 2007. Monthly rent: \$600.00.

September 1, 2007 to August 31, 2008. Monthly rent: \$650.00.

September 1, 2008 to August 31, 2009. Monthly rent: \$650.

In each of the above agreements, there is the following provision:

The length of the tenancy is 1 year, ending on [either August 31, 2007, 2008 or 2009], at which time, with 30 days notice in advance the tenancy may continue or be revised at the landlord's discretion.

The tenant takes the position that the landlord's \$50.00 rent increase effective September 1, 2007 contravened the Act, as the landlord failed to give 3 months

advance notice of the increase, and the amount of the increase exceeds the 3.7% permitted under the Residential Tenancy Regulation.

The landlord's position is that there are 3 separate and distinct tenancies, pursuant to 3 separate and distinct tenancy agreements. Further, the landlord asserts that the \$50.00 rent increase was not imposed by the landlord but, rather, it was discussed weeks in advance of the effective date and was agreed to by both parties. The landlord's agent supports the landlord's testimony in this regard. For his part, while the tenant does not dispute that discussion occurred, he now claims he felt pressured into agreeing to the increase.

Analysis

Section 44 of the Act addresses **How a tenancy ends**. Specifically, section 44(1) of the Act provides, in part:

44(1) A tenancy ends only if one or more of the following applies:

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

Notwithstanding the language in each of the 3 tenancy agreements, as above, to the effect that "the length of each tenancy is 1 year," there is no provision in the agreements either that "the tenant will vacate the rental unit on the date specified as the end of the tenancy," or evidence that the "landlord and tenant agree in writing to end the tenancy." I find that while the 2 agreements signed by the parties after the initial agreement expired have been amended or "revised," in effect the tenancy has been uninterrupted since its commencement on July 26, 2006.

Section 42 of the Act speaks to **Timing and notice of rent increases**, and provides in part:

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 established under the tenancy agreement;
- (b) if the tenant's rent has previously been increased, the effective date of the last increase made in accordance with this Act.

It appears from the evidence that there has been only one increase in rent since the start of this tenancy on July 26, 2006, which was effective a little more than one year later on September 1, 2007.

Section 43 of the Act addresses **Amount of rent increase**, and provides in part:

43(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.

Further, Residential Tenancy Policy Guideline # 37 provides, in part, as follows:

Tenant May Agree to a Rent Increase Greater than the Prescribed Amount

A landlord who desires to increase a tenant's rent by more than the amount of the allowed annual rent increase can ask the tenant to agree to an increase that is greater than that allowed amount. If the tenant agrees in writing to the proposed increase, the landlord is not required to apply to a dispute resolution officer for approval of that rent increase. The landlord must still follow requirements regarding the timing and notice of rent increases.

Based on the documentary evidence and testimony of the parties, I am satisfied that the parties signed an agreement whereby the monthly rent was increased by \$50.00 effective September 1, 2007, which is more than 12 months after the date on which the tenant's rent was first established. The parties do not dispute that a discussion on this matter took place between them in advance of the increase taking effect. Further, the tenancy agreement, signed by both parties, clearly provides that "The tenant will pay a monthly rent of \$650.00 on or before the 1st of each month." Pursuant to all of the above, I dismiss the tenant's application to have the landlord's rent increase set aside.

Section 42(2) of the Act speaks to notice of a rent increase:

42(2) A landlord must give a tenant notice of rent increase at least 3 months before the effective date of the increase.

Despite the agreement between the parties around an increase in the amount of monthly rent, I find that the landlord failed to provide the tenant with 3 months notice of the effective date of the increase. I therefore find that the tenant has established entitlement to reimbursement of \$150.00, which is the total amount of overpayment of \$50.00 in rent during each of the months of September, October and November 2007. As this outcome favours the tenant, I also find that the tenant is entitled to recovery of the \$50.00 filing fee. Accordingly, I order that the tenant may withhold \$200.00 from the next regular payment of monthly rent (\$150.00 + \$50.00).

The full text of the relevant legislation, Fact Sheets, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Pursuant to section 63 of the Act, discussion between the parties during the hearing led to a resolution of the tenant's concern to have the appropriate trades - people attend the unit to undertake certain repairs.

Conclusion

Pursuant to all of the above, I hereby order that the tenant may withhold **\$200.00** from the next regular payment of monthly rent. All other aspects of the tenant's application are hereby dismissed.

DATE: June 23, 2009

Dispute Resolution Officer