



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, MNDC

Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants made application to set aside a Notice to End Tenancy for Cause and for a monetary Order for money owed or compensation for damage or loss. At the hearing the male Tenant withdrew the application to set aside the Notice to End Tenancy, as the Tenants have vacated the rental unit.

The male Tenant declared that he personally served copies of the Application for Dispute Resolution and Notice of Hearing on the Landlord on July 11, 2009. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside, and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Background and Evidence

The male Tenant stated that he entered into a verbal tenancy agreement with the Landlord and that the tenancy began on December 10, 2007, at which time the Tenants agreed to pay monthly rent of \$650.00 plus \$50.00 per month for internet service. He stated that during this tenancy his co-tenant was hospitalized and he had a friend move in with him to help with the rent payment. He stated that the friend remained living in the rental unit after the co-tenant resumed living in the rental unit, which was sometime in May of 2008.

The male Tenant stated that after the co-tenant resumed living in the rental unit the Landlord verbally advised him that the rent would be increasing to \$900.00 per month because of the additional occupant. He stated that they started paying \$900.00 per month because he did not believe he had the option to refuse to pay the increase. He stated that he was not given a written notice of the rent increase and he did not agree to an increase in writing.

The male Tenant stated that the Tenants paid the increase rent from June 01, 2008 until the tenancy ended. The Tenants are seeking compensation for the additional \$250.00 in rent that they paid since June 01, 2008.

The male Tenant stated that a 1 Month Notice to End Tenancy for Cause was served to them on June 29, 2009, which indicated that they were required to vacate the rental unit on July 31, 2009. The reasons stated for the Notice to End Tenancy were that the Tenants have allowed an unreasonable number of occupants in the unit.

The male Tenant stated that in spite of the fact that they filed this Application for Dispute Resolution seeking to set aside the Notice to End Tenancy for Cause, the Tenants vacated the rental unit on August 01, 2009 as a result of the Notice to End Tenancy they had been served.

The male Tenant stated that when he agreed to pay the Landlord \$50.00 per month for internet service he presumed that he would be provided with uninterrupted internet access, although this was not specifically discussed by the parties. He stated that he was provided with internet access but each time he had to use the internet he had to ask the Landlord to activate his internet line. He stated that he only had uninterrupted internet access for the last four months of this tenancy.

Analysis

Based on the evidence provided by the Tenant and in the absence of evidence to the

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contrary, I find that this tenancy began on December 10, 2007, at which time the Tenants agreed to pay monthly rent of \$650.00; that the rent was increased to \$900.00 per month on June 01, 2008; that the Tenants paid the increased rent from June 01, 2008 until July 31, 2009; that the Tenants were not provided with written notice of the rent increase; and that the Tenants did not agree in writing to the rent increase.

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is calculated in accordance with the Residential Tenancy Regulation. In 2008 the Residential Tenancy Regulation authorized rent increases of up to 3.7%. In these circumstances, the Landlord imposed a 38.4% increase. As the Landlord imposed a rent increase that does not comply with the Residential Tenancy Regulation, I find that the rent increase imposed on June 01, 2008 was not increased in accordance with section 43(1)(a) of the *Act*.

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is ordered by the director on an application under section 43(3) of the *Act*. In these circumstances, I have no evidence that the director authorized the rent increase that the Landlord imposed on June 01, 2008 and I therefore find that the rent increase was not increased in accordance with section 43(1)(b) of the *Act*.

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is agreed to by the tenant in writing. In these circumstances, I have no evidence that the Tenants agreed, in writing, to the rent increase that the Landlord imposed on June 01, 2008 and I therefore find that the rent increase was not increased in accordance with section 43(1)(c) of the *Act*.

As the rent increase that was imposed on June 01, 2008 was not imposed in accordance with the *Act*, I find that the Tenants are entitled to recover the increase, pursuant to section 43(5) of the *Act*. In these circumstances, the Tenants paid the imposed rent increase of \$250.00 per month for a period of fifteen months. I therefore find that the Tenants are entitled to recover \$3,750.00 from the Landlord.

I decline to award the Tenants compensation for the sporadic internet access that he received during this tenancy. In reaching this conclusion, I was strongly influenced by the Tenant's admission that he did receive internet access, albeit he had to ask the Landlord to activate it whenever he wished to use the service, and that he did not clarify with the Landlord when he entered into this agreement that he would be receiving uninterrupted internet service. I was also highly influenced by the length of time that has passed since the parties entered into this agreement for internet access. The Tenant had the option of terminating or amending his agreement with the Landlord in regards to the internet service at any point during this tenancy and his continued acceptance of the terms of the agreement imply that he accepted the terms of that



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agreement.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$3,750.00, in compensation for a rent increase that did not comply with the legislation. Based on these determinations I grant the Tenant a monetary Order for the amount of \$3,750.00. In the event that the Landlord does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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 *Residential Tenancy Act*.

Dated: August 24, 2009.

Dispute Resolution Officer