

Decision

Dispute Codes: RI, DRI, MNDC, FF

Introduction

This hearing dealt with two applications: 1) by the landlord for a rent increase above the limit set by the Residential Tenancy Regulation; 2) by the tenant to dispute an additional rent increase; a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement; and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to a rent increase above the limit set by the Residential Tenancy Regulation
- Whether the tenant is entitled to a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement and / or recovery of the filing fee

Background and Evidence

A copy of a written tenancy agreement is not in evidence for this month-to-month tenancy which began in September 2001. Currently, monthly rent is \$418.50. A security deposit of \$192.50 was collected at the outset of tenancy; a copy of the "Intent to Rent" form included in evidence refers to this as a "damage deposit."

Pet Damage Deposit

Separate and distinct from the security deposit, there is no documentary evidence that a pet damage deposit was collected at the outset of tenancy in 2001. The tenant testified it was understood that he was permitted to own a pet, and there was no requirement for payment of a separate pet damage deposit.

Ownership of the building changed in 2005, and all tenants were advised of this by way of letter dated September 19, 2005. Thereafter, by way of 4 installment payments the tenant was required to pay the new landlord a pet damage deposit in the total amount of \$201.25; the last installment was made in December 2005. The tenant disputes the new landlord's authority to collect what he terms a "supplementary pet damage deposit."

Additional Rent Increase

As grounds for applying for an additional rent increase, the landlord claims as follows:

After the rent increase permitted by the Regulation, the rent for the rental unit or site is significantly lower than the rent payable for other rental units or sites similar to and in the same geographic area, as the rental unit or site.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute, and undertook to achieve at least a partial resolution.

Analysis

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

Pet Damage Deposit

Section 20 of the Act speaks to **Landlord prohibitions respecting deposits**, and states in part as follows:

20 A landlord must not do any of the following:

(c) require a pet damage deposit at any time other than

(i) when the landlord and tenant enter into the tenancy agreement,
or

(ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property.

(d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property.

As earlier noted, the tenancy began in September 2001, and the documentary evidence shows that a security deposit (“damage deposit”) was collected at that time. Ownership of the building changed in 2005, and in 2005 a separate pet damage deposit was collected. Nearly 5 years after the collection of the pet damage deposit, the tenant filed an application for dispute resolution to dispute its collection.

Based on the documentary evidence and testimony of the parties, I find that the new landlord became aware of the tenant’s ownership of a pet shortly after becoming the new landlord. The new landlord did not evidently take issue with the tenant’s ownership of a pet. I find that the new landlord’s collection of a pet damage deposit was the first and only occasion when a pet damage deposit was collected from the tenant.

Accordingly, I find that it is not a “supplementary pet damage deposit” as characterized by the tenant, and that the landlord was entitled to its collection.

Further to the above, I find that the doctrine of laches should be applied to bar the tenant’s claim. This is a legal doctrine based on the maxim that equity aids the vigilant and not those who slumber on their rights. I find that the tenant’s inordinate delay in asserting this claim and the manifest prejudice to the landlord that has resulted from their failure to make a timely objection, warrants the denial of the tenant’s claim.

Additional Rent Increase

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.

(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.

Section 23 of the Regulation addresses **Additional rent increase**, and provides in part:

23(1) A landlord may apply under section 43(3) of the Act [*additional rent increase*] if one or more of the following apply:

- (a) after the rent increase allowed under section 22 [*annual rent increase*], the rent for the rental unit is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit;

Further, section 23(4) of the Regulation provides in part:

23(4) In considering an application under subsection (1), the director may

- (a) grant the application, in full or in part,
- (b) refuse the application,...

For a conventional residential tenancy rent increase that takes effect in 2010, the allowable increase is 3.2%.

Residential Tenancy Policy Guideline # 37 speaks to “Rent Increases” and under the heading - **Significantly lower rent**, provides as follows:

The landlord has the burden and is responsible for proving that the rent for the rental unit is significantly lower than the current rent payable for similar units in the same geographic area. An additional rent increase under this provision can apply to a single unit, or many units in a building. If a landlord wishes to compare all the units in a building to rental units in other buildings in the geographic area, he or she will need to provide evidence not only of rents in the other buildings, but also evidence showing that the state of the rental units and amenities provided for in the tenancy agreements are comparable.

The rent for the rental unit may be considered “significantly lower” when (i) the rent for the rental unit is considerably below the current rent payable for similar units in the same geographic area, or (ii) the difference between the rent for the rental unit and the current rent payable for similar units in the same geographic area is large when compared to the rent for the rental unit. In the former, \$50 may not be considered a significantly lower rent for a unit renting at \$600 and a comparative unit renting at \$650. In the latter, \$50 may be considered a significantly lower rent for a unit renting at \$200 and a comparative unit renting at \$250.

“Similar units” means rental units of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community.

The “same geographic area” means the area located within a reasonable kilometer radius of the subject rental unit with similar physical and intrinsic characteristics. The radius size and extent in any direction will be dependent on particular attributes of the subject unit, such as proximity to a prominent

landscape feature (e.g., park, shopping mall, water body) or other representative point within an area.

Additional rent increases under this section will be granted only in exceptional circumstances. It is not sufficient for a landlord to claim a rental unit(s) has a significantly lower rent that results from the landlord's recent success at renting out similar units in the residential property at a higher rate. However, if a landlord has kept the rent low in an individual one-bedroom apartment for long term renter (i.e., over several years), an Additional Rent Increase could be used to bring the rent into line with other, similar one-bedroom apartments in the building. To determine whether the circumstances are exceptional, the dispute resolution officer will consider relevant circumstances of the tenancy, including the duration of the tenancy, the frequency and amount of rent increases given during the tenancy, and the length of time over which the significantly lower rent or rents was paid.

The landlord must clearly set out all the sources from which the rent information was gathered. In comparing rents, the landlord must include the Allowable Rent Increase and any additional separate charges for services or facilities (e.g., parking, laundry) that are included in the rent of the comparable rental units in other properties. In attempting to prove that the rent for the rental unit is significantly lower than that for similar units in the same geographic area, it is **not** sufficient for the landlord to solely or primarily reference Canada Mortgage and Housing Corporation (CMHC) statistics on rents. Specific and detailed information, such as rents for all the comparable units in the residential property and similar residential properties in the immediate geographical area with similar amenities, should be part of the evidence provided by the landlord.

The amount of a rent increase that may be requested under this provision is that which would bring it into line with comparable units, but not necessarily with the highest rent charged for such a unit. Where there are a number of comparable

units with a range of rents, a dispute resolution officer can approve an additional rent increase that brings the subject unit(s) into that range. For example, a dispute resolution officer may approve an additional rent increase that is an average of the applicable rental units considered. An application must be based on the projected rent after the allowable rent increase is added. Such an application can be made at any time before the earliest Notice of Rent Increase to which it will apply is issued.

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution of this matter. Specifically, it was agreed as follows:

- **that the current rent of \$418.60 will be increased by \$48.04 (approximately 11.48%), bringing the monthly rent to \$466.64.**

A rent increase cannot be introduced in advance of the required 3 months notice and, thereafter, the new rent remains fixed for the next 12 months. In this regard, section 42 of the Act speaks to **Timing and notice of rent increases**, as follows:

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 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 rent increase must be in the approved form.

(4) If a landlord's notice of rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

The approved form is RTB – 7 which is produced by the Residential Tenancy Branch.

Conclusion

The landlord's application for an additional rent increase after a rent increase permitted by the Regulation is hereby approved, according to the agreement around the specific amount of the increase which was reached between the parties during the hearing.

As the tenant's application for compensation for damage or loss under the Act, regulation or tenancy agreement has been dismissed, and as the landlord has succeeded in the application for an additional rent increase, the tenant's application to recover the filing fee is hereby dismissed.

DATE: July 19, 2010

Dispute Resolution Officer