

DECISION

Dispute Codes CNR, DRI, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and to dispute a rent increase.

The hearing was conducted via teleconference and was attended by the tenant and her assistant and the landlord's agent.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to disregard a notice of rent increase and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 43, 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted into evidence a copy of a tenancy agreement signed by the parties for a month to month tenancy beginning on April 15, 2002 for a monthly rent of \$950.00 plus ½ of the utilities due on the 15th of each month and a security deposit of \$475.00 was paid.

The tenant testified that originally the utilities were paid by the landlord and that this was changed during the tenancy and the utilities for the entire residential property were put in this tenant's name and she collected utilities from the other tenants.

The tenant also submitted a copy of a Notice of Rent Increase dated and signed by the landlord on January 30, 2008 stating that the rent would go from \$950.00 per month plus 50% of the utilities to \$1,000.00 per month plus 35% of the utilities, effective May 1, 2008. This represents a rent increase of \$50.00 and a reduction in utilities by 15%.

The tenant also testified that despite the Notice of Rent Increase stating that rent would be \$1,000.00 the landlord has expected \$1,050.00 per month since May 2008. The landlord's agent testified that this additional \$50.00 per month was for utilities, but he could provide no explanation as to why the landlord expected the tenant to pay the landlord utilities when the utilities were in the tenant's name.

The tenant's agent confirmed the landlord had used the amount of \$1,050.00 per month since May 2008 to calculate the amount the landlord is claiming in arrears and used on the 10 Day Notice to End Tenancy for Unpaid Rent as the amount owing.

The tenant testified that she has had the utilities on equalized payments and that she currently pays approximately \$248.00 per month for the residential property utilities and that her portion is \$83.00 per month. The tenant states that these amounts change approximately every 6 months and she is unable to determine the entire period rates since May 2008.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving a notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice given under this section must comply with Section 52.

Section 52 stipulates the notice must, in order to be effective, be in writing and among other things state the grounds for ending the tenancy. In the case where the landlord wants to end the tenancy for unpaid rent, the amount stipulated as owed as of a certain date is the rationale for ending the tenancy.

I accept the landlord had included in his calculation of the rent outstanding the additional \$50.00 that was not part of the rent increase noted in the Notice of Rent Increase issued on January 30, 2008.

I accept that because the tenant had the utilities registered in her name there was no need for her to pay the landlord for utilities and that the landlord was not entitled to this \$50.00. As a result, I find the amount noted in the 10 Day Notice to End Tenancy is not accurate and I grant the tenant's application to cancel the 10 Day Notice to End Tenancy issued on February 7, 2011.

In relation to the Notice of Rent Increase the landlord issued on January 30, 2008, the percentage the rent was increased when the rent went from \$950.00 to \$1,000.00 was 5.26%. The allowable percentage rent increase for 2008 was 3.7%.

Section 43 stipulates the amount of a rent increase a landlord may impose is only up to the amount calculated in accordance with the regulations. The regulations state the amount is equal to the inflation rate + 2%. The annual allowable rent increase percentage is available on the Residential Tenancy Branch website at <http://www.rto.gov.bc.ca/>.

While I acknowledge the landlord tried to lessen this amount by reducing the amount the tenant was responsible for in utilities, I find that utilities were not included in the rent as part of the tenancy and as such, the reduction of the percentage for utilities that this tenant was responsible for was a term of the tenancy not a portion of the rent.

Even if I were to accept the reduction of 15% from the amount owed by the tenant on a monthly basis as a way to reduce the amount of the rent increase, there is no ability to

determine how much the rent increase would be reduced, particularly prior to implementing such a rent increase.

As a result, I find the landlord issued a Notice of Rent Increase that does not comply with the requirements under Section 43 of the *Act* and I find the amount of the monthly rent remains as it was prior to the issuance of this notice.

As this hearing dealt only with the tenant's application to cancel a notice to end tenancy and to dispute an additional rent increase, I make no rulings on the amounts the tenant may or may not owe the landlord, as there are many additional factors relating to this tenancy that impact that determination.

The parties remain at liberty to continue to negotiate to determine how much rent may be owed by the tenant and follow up in any manner that is in accordance with the *Act*, regulations and tenancy agreement.

Conclusion

As noted above, I order the 10 Day Notice to End Tenancy for Unpaid Rent issued on February 7, 2011 to be cancelled and I find the tenancy remains in full force and effect.

I further order that rent in this tenancy remains at \$950.00 per month until such time as the landlord chooses to issue a Notice of Rent Increase that is compliant with the *Act*.

As the tenant was successful in her application, I find that she is entitled to recover the filing fee of \$50.00 for her Application. In accordance with Section 72(2)(a), I order the tenant may retain this amount from her next rental payment in satisfaction of this order.

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: February 22, 2011.

Residential Tenancy Branch