



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNR, OLC, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement, to dispute an additional rent increase, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution. At the hearing the Tenant withdrew her application to dispute the Notice to End Tenancy, as she has vacated the rental unit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether there has been a rent increase that did not comply with the *Act* or the tenancy agreement and whether the Tenant is entitled to recover the fee paid for filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy officially began on August 01, 2010 but the Tenant moved into the rental unit a few days prior to the official start date.

The Landlord and the Tenant agree that the Tenants signed a tenancy agreement on August 01, 2010, in which the Tenant agreed to pay monthly rent of \$500.00 on the first day of each month. A copy of this tenancy agreement was submitted in evidence by the Tenant.

The Landlord and the Tenant agree that the Tenants signed another tenancy agreement, in which the Tenant agreed to pay monthly rent of \$800.00 on the first day of each month. The Landlord contends that this tenancy agreement was signed on August 01, 2010. The Tenant stated that she does not know when the second tenancy agreement as she was not given a copy of that agreement, but she is certain that it was

signed prior to the agreement which required her to pay \$500.00 in rent. A copy of this tenancy agreement was not submitted in evidence by either party.

The Landlord contends that the \$500.00 tenancy agreement was created because the Tenant required a tenancy agreement in this amount for the purposes of obtaining income assistance from the Government. She stated that the \$800.00 agreement was created as they had an understanding that the Tenant's boyfriend would be paying the additional \$300.00 in cash.

The Tenant contends that she initially agreed to pay \$800.00 but at the start of the tenancy the Landlord agreed to reduce the rent to \$500.00 due to deficiencies with the rental unit.

The Tenant contends that she had paid \$800.00 in rent for August of 2010 by the time they renegotiated rent; that \$200.00 of that payment was applied to rent from July of 2010, given that she moved into the unit prior to August 01, 2010; that \$100.00 of the August payment was applied to her rent for September; and that she only paid \$400.00 in rent for September due to the overpayment from August.

The Tenant stated that the Landlord informed her that rent was increasing to \$800.00 in October of 2010 and that she paid the increased rent for October of 2010, November of 2010, December of 2010, and January of 2011 because she did not realize the Landlord did not have the right to increase the rent at that point in the tenancy. She stated that she eventually learned that the Landlord did not have the right to increase the rent within one year of the tenancy beginning and so she only paid \$500.00 in rent for February of 2011 and \$500.00 in rent from March of 2011. She stated that she did not pay any rent for April of 2011.

The Landlord stated that the Tenant has paid \$800.00 in rent for each month of this tenancy, with the exception of April of 2011, for which she paid no rent.

The Tenant and the Landlord agree that the Tenant paid \$1,100.00 in rent to the Landlord, via an electronic bank transfer, on March 14, 2011. The Tenant stated that this payment represented her \$500.00 rent payment for February of 2011, a \$500.00 rent payment for March of 2011, and two late fees of \$100.00. The Landlord stated that the \$1,100.00 bank transfer represented a partial rent payment for March and February of 2011 and that the Tenants also paid \$600.00 in cash, which included the remaining outstanding rent of \$500.00 for March and February rent plus \$100.00 in late fees. The Landlord was unable to state when the \$600.00 cash payment was made. The Tenant denies making a cash payment in March.

The Landlord and the Tenant agree that the Tenant was personally served with a Ten Day Notice to End Tenancy by an agent for the Landlord on March 30, 2011. The Landlord acknowledged being served with a copy of the Notice to End Tenancy prior to these proceedings, however she did not have one with her at the time of the hearing. A

copy of the Notice to End Tenancy was submitted to the Residential Tenancy Branch by the Tenant, a copy of which was available to me at the time of the hearing.

The Notice to End Tenancy that was submitted in evidence declares that the Tenant owes rent of \$1,540.00 that was due on February 01, and March 01, 2011. The Landlord was unable to explain how the Tenant could owe \$1,540.00 in rent for February and March of 2011 if she had paid \$800.00 per month in rent since the start of this tenancy, as the Landlord contends.

The Landlord and the Tenant agree that this tenancy ended on April 11, 2011 or April 12, 2011.

Analysis

I find that the Landlord and the Tenant have a tenancy agreement that required the Tenant to pay monthly rent of \$500.00. In making this determination I was heavily influenced by the written tenancy agreement that was submitted in evidence.

In the event that the Tenant's testimony is accurate and the \$800.00 agreement was signed prior to the \$500.00 agreement, I find that the \$500.00 agreement replaced the \$800.00 agreement. In the event that the \$500.00 agreement was created as a ruse to deceive the Provincial Government, I find that the Landlord should have created a document that clearly outlined that the second tenancy agreement did not replace the first tenancy agreement. Without some sort of written documentation that shows the second tenancy agreement did not replace the first tenancy agreement, I find that the most recent agreement governs the tenancy.

In the event that Landlord's testimony is accurate and the \$800.00 agreement was signed on the same day as \$500.00 agreement, I find that the Landlord had an obligation to establish, in writing, which of the agreements was valid. The court held in *Derby Holdings Ltd. V. Walcorp Investments Ltd.* 1986, 47 Sask R. 70 and *Coronet Realty Development Ltd. And Aztec Properties Company Ltd. V. Swift*, (1982) 36 A.R. 193, that where there is ambiguity in the terms of an agreement prepared by a landlord, the contra proferentem rule applies and the agreement must be interpreted in favour of the tenant. In the event that two agreements were prepared of the same day, I find that the Landlord created an ambiguity in the terms of this tenancy and that the ambiguity should be interpreted in favour of the Tenant.

In determining that the Landlord has submitted insufficient evidence to establish that she has a tenancy agreement that requires the Tenant to pay monthly rent of \$800.00, I was heavily influenced by the fact that a written tenancy agreement requiring the Tenant to pay rent of \$800.00 was not submitted in evidence. Without the benefit of seeing that document and ascertaining the terms of that agreement and the date it was signed, I find that it is reasonable to enforce the terms of the tenancy agreement that was submitted in evidence, which is the agreement that stipulates rent is \$500.00.

I favour the testimony of the Tenant, who contends that she paid a total of \$5,200.00 in rent for the period between August 01, 2011 and April 12, 2011 over the testimony of the Landlord, who contends that the Tenant paid a total of \$6,400.00 in rent for the period between August 01, 2011 and April 12, 2011. I favoured the evidence of the Tenant over the evidence of the Landlord, in part, because the Tenant's testimony was consistent and clear. I favoured the evidence of the Tenant over the evidence of the Landlord, in part, because the Landlord's testimony that \$800.00 in rent had been paid for each month except April of 2011 was inconsistent with the Notice to End Tenancy that was served on March 30, 2011, which declared that rent was \$1,540.00 in arrears. I favoured the evidence of the Tenant over the evidence of the Landlord, in part, because the Landlord could not clearly state when \$600.00 in rent was paid in cash for rent from February and March of 2011, which causes me to conclude that the Landlord does not have reliable payment records. For all the aforementioned reasons, I find that the Tenant paid at least \$5,200.00 in rent for the period between August 01, 2011 and April 12, 2011.

As the Tenant was required to pay rent of \$4,500.00 for the period between August 01, 2011 and April 30, 2011 and she actually paid \$5,200.00, I find that she overpaid her rent by \$700.00.

I find that the Landlord was imposing a rent increase that did not comply with legislation whenever she collected monthly rent of \$800.00 and that she must return the unlawful rent increases that were imposed, pursuant to section 43(5) of the *Act*. As the Tenant overpaid her rent by \$700.00, I find that this amount must be refunded to the Tenant.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$750.00, which is comprised of \$700.00 in rent overpayments and \$50.00 in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution. Based on these determinations I grant the Tenant a monetary Order for the amount of \$750.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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: April 26, 2011.

Residential Tenancy Branch