



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI CNR RPP AS RR FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") to dispute an additional rent increase, to cancel a notice to end tenancy for unpaid rent, for a monetary order for emergency repairs, for an order for the landlord to return the tenant's personal property, to allow a tenant to assign or sublet because the landlord's permission has been unreasonably withheld, to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee.

The tenant, the landlord and the son of the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that he received the evidence package of the landlord and had an opportunity to review it. Therefore, I find the tenant has been duly served in accordance with the *Act*. The landlord and the son of the landlord affirmed that they did not receive the one page evidence package from the tenant. The tenant claim he served the landlord in person with his evidence on July 14, 2012, however, the tenant later indicated that the information was contained in the landlord's evidence. As a result, the evidence of the tenant was not considered in this Decision due to the disputed testimony relating to the service of the tenant's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. I have considered all of the evidence before me in this Decision.

Preliminary Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy and

to dispute an additional rent increase. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and to dispute an additional rent increase at these proceedings. The balance of the tenant's application is dismissed, with leave to re-apply. I note this does not extend any applicable time limits under the *Act*.

The landlord and the son of the landlord attempted to make submissions on unrelated matters during the hearing. The landlord and the son of the landlord were reminded during the hearing that only the matters before me would be considered in my Decision and that I would not hear the merits of matters that were not before me. The landlord and the landlord's son were informed that the *Act* does not provide for a respondent to make an application through the application of the other party, and as a result, were informed that they would have to file their own application for their claim(s) to be considered on its own merits.

Issues to be Decided

- Should the notice to end tenancy be cancelled?
- Was an additional rent increase imposed in accordance with the *Act*?

Background and Evidence

The parties agree that a verbal tenancy agreement exists. The parties disputed the start of the tenancy. The tenant testified that the tenancy began on May 1, 2012 and was permitted to move items into the rental unit early on April 23, 2012 at no additional cost. The landlord affirmed that the tenancy began on April 20, 2012 and that \$150.00 remains unpaid for the portion of rent from April 20, 2012 to April 30, 2012. The tenant disputed the landlord's testimony that rent was owed for April 2012.

Both parties agree that rent in the amount of \$500.00 is due on the first day of each month. Both parties agree that a \$250.00 security deposit was paid at the start of the tenancy, although the start date is in dispute.

The parties agree that on April 25, 2012, the landlord received a cheque from social services which included \$250.00 for the security deposit and \$500.00 for May 2012 rent. The parties agree that on June 19, 2012, the tenant paid \$180.00 by cheque to the landlord which left a balance owing for June's rent of \$320.00. The parties agree that on June 27, 2012, the tenant paid the landlord \$820.00 in cash. This covered the remaining

balance owing for June 2012 rent and a credit of \$500.00 which covered the July 2012 rent.

The landlord's son affirmed that a 10 Day Notice to End Tenancy was issued on the request of the tenant so the tenant could claim "hardship" with social services. A total of two 10 Day Notices to End Tenancy for Unpaid Rent (the "Notices") were submitted as evidence.

The first Notice dated July 1, 2012, is dated by the landlord on the same date that rent was due. The first Notice is in the amount of \$330.00 for rent due July 1, 2012. The son of the landlord states in the evidence package that \$330.00 consists of \$280.00 for "backrent" for July and \$50.00 for furnace oil. During the hearing, the son of the landlord stated that the amount owing to the landlord is \$150.00 from April 2012 for unpaid rent and \$90.00 for a personal loan provided by the son of the landlord to the tenant. The second Notice is dated July 9, 2012 and was served the same date in person for unpaid rent in the amount of \$330.00.

The son of the landlord confirmed that there was no written notice completed for an additional rent increase and that the \$50.00 that the tenant is referring to as an increase is for furnace oil. The tenant disputed that furnace oil was part of the tenancy agreement.

The landlord provided the last 2 pages of an unsigned tenancy agreement (form RTO 001/Nov99), correspondence, photographs, notices, and a proof of service as evidence for this hearing. Only the evidence relevant to the matters before me have been considered in this Decision.

Analysis

Based on the oral testimony and documentary evidence before me, and on a balance of probabilities, I find the following.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes. As the landlord and tenant dispute the \$150.00 rent for April 2012, I am unable to determine if rent is owed and therefore have not considered this in my Decision.

10 Day Notices – The landlord affirmed that the 10 Day Notices were served based on a request from the tenant, so that the tenant could claim “hardship” with social services. Furthermore, the *Act* does not permit a Notice to be served on the same date as the rent is due. In both Notices, the date of the Notice is the same date as the rent is due. Therefore, **I dismiss** both Notices and order that the tenancy continue until ended in accordance with the *Act* as the Notices were not completed in accordance with the *Act* or Regulation.

Additional rent increase – Section 42 of the *Act* states:

Timing and notice of rent increases

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 a rent increase must be in the approved form.

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

Based on the testimony, **I find** that the landlord breached section 42 of the *Act* by not providing notice at least 3 months before the effective date of the rent increase and that the notice be in the approved form. Therefore, **I find** the tenant's rent remains at \$500.00 per month and order that any future increases comply with the *Act*.

Conclusion

I have only considered the tenant's application to cancel a notice to end tenancy and to dispute an additional rent increase. The balance of the tenant's application is dismissed,

with leave to re-apply, with the exception of the filing fee which is dismissed without leave to re-apply. I note this does not extend any applicable time limits under the *Act*.

I cancel the Notices to End Tenancy for Unpaid Rent. I find that the tenancy continues until ended in accordance with the *Act*.

I find that the landlord did not comply with section 42 of the *Act* and that an additional rent increase was not imposed in accordance with the *Act*. I order that any future rent increase comply with the *Act*.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 25, 2012

Residential Tenancy Branch