



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF, DRI, CNR,

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to dispute an additional rent increase; to set aside a Notice to End Tenancy for Unpaid Rent; and for a monetary Order for money owed or compensation for damage or loss.

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 relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*?

Is the Tenant entitled to a rent refund and should the Notice to End Tenancy be set aside, pursuant to sections 47(4) and 67 of the *Act*?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 01, 2003; that at that time the Tenant agreed to pay monthly rent of \$500.00 by the first day of each month; and that the Tenant paid a security deposit of \$250.00 on October 31, 2003.

The Landlord and the Tenant agree that in January of 2009 the Landlord served the Tenant with a Notice of Rent Increase, which declared that the rent would increase from \$500.00 to \$600, effective May 01, 2009. The parties agreed that the Tenant did not agree, in writing, to the rent increase and that the Landlord did not have authority from the Residential Tenancy Branch to increase the rent by this amount. The female Landlord stated that the rent increase was imposed, in part, because the rent had not been increased since the start of the tenancy and the Tenant was using more of the property than was agreed upon in the original tenancy agreement, although the Tenant was not told to stop using any portion of the property.

The Landlord and the Tenant agree that the parties agreed the Tenant could store equipment in an area that the Tenant did not have the right to use under the terms of the original tenancy agreement, and that the Tenant began paying an additional \$100.00 for this area on October 01, 2010. The Tenant does not dispute the Landlord's right to collect this additional payment.

The Landlord and the Tenant agree that the Tenant paid \$6,800.00 in rent in 2009; \$7,500.00 in rent in 2010; \$4,800.00 in rent in 2011; \$8,922.50 in 2012; and that nothing was paid in 2013. I note that there is a slight discrepancy between the amount of rent the Tenant declared was paid in written documents and the rent that the parties agreed to in their oral evidence.

The Landlord and the Tenant agree that on December 19, 2012 the Tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of December 31, 2012.

Analysis

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 regulations. Section 22(2) of the Residential Tenancy Regulation stipulates that a landlord may impose a rent increase that is no greater than two percent above the annual inflation rate which, for 2009, was 3.7%. As the proposed rent increase was greater than the amount calculated in accordance with the regulations, I find that the Landlord did not have authority to increase the rent by \$100.00 in 2009, pursuant to section 43(1)(a).

Section 43(1)(b) of the Act stipulates that a landlord may impose a rent increase only up to the amount that has been ordered by the director on an application under section 43(3) of the Act. As I have no evidence that the Landlord made an application under section 43(3) of the Act, I find that the Landlord did not have authority to increase the rent in 2009, pursuant to 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. As I have no evidence that the Tenant agreed to the proposed rent increase, in writing, I find that the Landlord did not have authority to increase the rent pursuant in 2009, to section 43(1)(c) of the Act. I therefore find that the Tenant is entitled to recover any portion of this rent increase that was paid.

I find that the parties mutually agreed to amend the terms of their tenancy agreement on October 01, 2010, at which time the parties agreed the Tenant would pay an additional \$100.00 in rent for the right to use additional property. As this increased rent was directly associated to additional facilities, I find that this rent increase was not restricted by sections 40, 41, 42, or 43 of the Act, and that the Landlord had the right to collect this increase.

As the rent should have remained at \$500.00 per month in 2009, I find that the Tenant was obligated to pay \$6,000.00 in rent in 2009. As the Tenant paid \$6,800.00 in rent in 2009, I find that the Tenant is entitled to a rent refund of \$800.00.

As the rent should have remained at \$500.00 per month until October 01, 2010, at which time it was increased by \$100.00 per month, I find that the Tenant was obligated to pay \$6,300.00 in rent in 2010. As the Tenant paid \$7,500.00 in rent in 2010, I find that the Tenant is entitled to a rent refund of \$1,200.00.

As the rent was increased to \$600.00 per month on October 01, 2010, I find that the Tenant was obligated to pay \$7,200.00 in rent in 2011. On the basis of the testimony of both parties at the hearing, I find that the Tenant paid \$4,800.00 in 2011, and that the rent for 2011 was in arrears by 2,400.00. After applying the aforementioned rent refunds, I find that the Tenant still owed the Landlord \$400.00 in rent for 2011.

As there was no rent increase after 2010, I find that the Tenant was obligated to pay \$7,200.00 in rent for 2012. As the Tenant paid \$8,922.50 in 2012, I find that the rent for 2012 was paid in full; that the arrears for 2011 has been repaid; and that the Tenant is entitled to a rent refund of \$1,322.50.

As there was no rent increase after 2010, I find that the Tenant was obligated to pay \$600.00 in rent for January of 2013. After deducting this amount from the Tenant's rent refund, I find that the Tenant is entitled to a rent refund of \$722.50.

On the basis of these calculations, I dismiss the Landlord's application for a monetary Order for unpaid rent and I grant the Tenant's application for a rent refund, in the amount of \$722.50.

Section 46 of the *Act* authorizes a landlord to end a tenancy when rent is not paid when it is due. As rent was not due when the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, I find that the Landlord did not have the right to end this tenancy, pursuant to section 46 of the *Act*, in December of 2012. I therefore grant the Tenant's application to set aside the Notice to End Tenancy and I dismiss the Landlord's application for an Order of Possession.

I find that the Landlord's Application for Dispute Resolution has been without merit and I dismiss the application to recover the fee for filing an Application for Dispute Resolution.

I find that this tenancy shall continue until it is ended in accordance with the *Act*. I find that the rent remains at \$600.00 per month until it is increased in accordance with the *Act*. I find that the Landlord may retain the security deposit until the tenancy has ended.

Conclusion

I grant the Tenant a monetary Order for the amount of \$722.50. In the event 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: January 23, 2013

Residential Tenancy Branch

