



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application to dispute an additional rent increase; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

This matter was original convened on December 14, 2012. At that hearing the matter of jurisdiction was discussed and the hearing was adjourned to give the landlord opportunity to provide additional evidence concerning the matter of jurisdiction and evidence of service. The hearing was reconvened to today's date

The tenants and landlord attended the conference call hearing. The tenants' agent attended and spoke on behalf of the tenants. The parties gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Whether or not the Residential Tenancy Office has jurisdiction in this matter?
- If so:

- Are the tenants entitled to dispute an additional rent increase?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenants' agent testifies that there was a tenancy in place between this landlord and the tenants. This tenancy started on April 01, 2005 and ended on August 28, 2012. At the start of the tenancy the rent was \$750.00 per month and this was increased to \$1,000.00 per month on December 01, 2010. The landlord disputes that there was a tenancy in place but agrees with the other facts.

Jurisdiction

The tenants' agent testifies that the landlord was a caregiver for the tenants and collected rent from both the ministry and the tenants each month. Therefore the tenants' claim a tenancy had been created and falls under the jurisdiction of the *Residential Tenancy Act*.

The landlord argues that he had a contract with Community Living BC (CLBC) to provide care for the tenants as they are mentally challenged. The landlord testifies that the tenants occupied the basement suite of the landlord's home and they did not share kitchen or bathroom facilities. The landlord testifies that this is a type of foster care for adults and enabled the tenants to live independently. The tenants join this care program voluntarily and do not enter into a tenancy agreement with the landlord and can move out without the required Notice period established under the *Act* as long as they give 30 days' notice. The landlord testifies that he supported the tenants in their daily life with debt payments, shopping for food and caring for their child. The tenants went on holiday with the landlord and his family and took part in family events.

The landlord argues that in the letter provide by CLBC it establishes that the landlord is contracted to CLBC to provide support to adults with developmental disabilities and to provide residential "Home Share" services. The letter goes on to explain that the service provider receives a monthly service fee for the individuals covered by the contract and the individuals must contribute to the service provider a portion of their monthly pension with disability benefits towards their shelter and support. There is no expectation by CLBC that there is a rental agreement between the service provider and the individuals placed in their home. The landlord maintains that the Residential Tenancy Office does therefore not have jurisdiction in this matter under s. 4 of the *Act*.

Dispute an additional rent increase.

The tenants' agent testifies that the landlord illegal increased the tenants rent from \$750.00 to \$1,000.00 on December 01, 2010. The tenants therefore have made overpayments on their rent to the landlord each month since that date and seek to recover the amount of \$5,500.00 from the landlord. The tenants' agent testifies that an error was made on the application as to the amount the tenants are claiming. However the tenant's agent testifies the tenants have put more details in the documentary evidence and details of the dispute and the landlord would be aware of their monetary claim.

The landlord disputes the tenants claim. The landlord testifies that it was determined that the landlord was being underpaid for his services by CLBC. The shelter portion the tenants' received was \$1,400.00 but as the tenants paid for their own groceries the rest of the money went towards their shelter. The landlord testifies that he asked CLBC what to do and he was told to take \$1,000.00 for shelter. The landlord testifies that Welfare paid a portion of the tenants rent and if the tenants earned more than an allowable amount each month, the money earned was deducted from their Welfare payments and the tenants would have to contribute this amount towards their rent.

Money owed or compensation for damage or loss

The tenants' agent testifies that the tenants tried to give the landlord Notice to end the tenancy but the landlord refused to take this from the tenants. On August 28, 2012 the tenants posted a notice on the landlord's door and moved out on that day. The tenants' agent testifies that as the landlord was able to sign cheques on the tenants' bank account with another signature of the tenants and the landlord wrote a cheque to himself for \$1,000.00 for Septembers rent and signed that cheque. The tenants' agent agrees the tenant SF also countersigned this cheque but may not have been made aware what he was signing.

The landlord testifies that he did write a cheque to himself for Septembers rent as the tenants had earned too much money in August 2012 and Welfare would not pay their rent for September. The landlord testifies that he normally got a payment from Welfare via the tenants in the third week of each month so the cheque was dated for August 25, 2012 before the landlord knew the tenants were moving out. The landlord testifies that he was entitled to rent for September, 2012 as the tenants had not provided 30 days written notice to the landlord.

The tenants' agent testifies that the landlord wrote this cheque on August 25, 2012 before he knew the tenants would not receive a Welfare payment which is made on the last Wednesday of each month not the third week in each month as claimed by the landlord and before the landlord knew the tenants were moving out. The tenants' agent questions the landlord as to his motive in writing the cheque and did the landlord receive a payment twice for September; once from the tenants and once from Welfare. The tenants' agent testifies that the landlord has no supporting documentation that the tenants earned too much in August to get Welfare payments.

Filing fee

No filing fee was paid by the tenants for this application

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

Jurisdiction

In the matter of whether or not this matter falls under the jurisdiction of the *Residential Tenancy Act*; I refer the parties to s. 4(g) of the *Act* which states:

This Act does not apply to

(g) Living accommodation

(i) in a community care facility under the Community Care and Assisted Living Act,

(ii) in a continuing care facility under the Continuing Care Act,

(iii) in a public or private hospital under the Hospital Act,

(iv) if designated under the Mental Health Act, in a Provincial mental health facility, an observation unit or a psychiatric unit,

(v) in a housing based health facility that provides hospitality support services and personal health care, or

(vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,

The landlord argues that the Residential Tenancy Office do not have jurisdiction in this matter as this was not a tenancy but rather semi independent living for the tenants in the landlords basement unit. The landlord testifies that he supported the tenants' daily living and assisted them in matters such as food shopping, debt payments and childcare. However I find from the evidence presented that a tenancy has been established as the landlord has accepted rent from the tenants, the tenants have

separate living accommodation from the landlord and the landlord has not shown how the tenants living accommodation falls under any of the above criteria as listed in s. 4(g) of the *Act*. Furthermore the landlords letter provided in evidence does not give further clarity as to which *Act* as referred to in s. 4(g) that this living arrangement would fall under. Consequently, it is my decision that I do have jurisdiction in the matter before me under the *Act*.

I also refer the parties to s. 5 of the *Act* that states:

5 *(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.*

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Dispute a rent increase

I have considered the tenants claim in this matter and find the tenants have given the landlord notice that they are making a claim under this section. Therefore I will allow the amendment to the tenants claim to include this monetary portion. I refer the landlord to s. 42(2) and 42(3) of the *Act* which states:

42(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

42(3) A notice of a rent increase must be in the approved form.

Section 43 of the *Act* states:

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.

The landlord has provided no evidence to show the rent increase was given on an approved form or with three months notice; the landlord has provided no evidence to show that the director ordered an additional rent increase and in fact the landlord has testified that CLBC told the landlord he could charge this extra rent; and the landlord has not charged an increase in rent in accordance with the regulations which state the allowable amount of rent increase for 2010 was 3.2 percent.

Consequently I find in favour of the tenants claim pursuant to s. 43(5) of the *Act* which states:

If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

I therefore award the tenants the sum of **\$5,500.00** for the rent increase imposed from December 2010 to September 2012 calculated at 22 months X \$250.00 a month.

Money owed or compensation for damage or loss

As I have found a tenancy has been established between the parties I refer the parties to s. 45(1) of the *Act* which states:

Tenant's notice

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As the tenants failed to provide the landlord with proper notice in writing to move out, irrespective of whether or not the landlord accepted their notice, then the landlord is entitled to collect rent for September, 2012. The tenants' agent has claimed that it is possible that the landlord collected rent that month from both the tenants and from Welfare. However the tenants have provided no evidence of this additional payment from Welfare having been made. Therefore this section of the tenants claim is dismissed.

Conclusion

I HEREBY FIND in partial favor of the tenants' amended monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$5,500.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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 28, 2013

Residential Tenancy Branch

