



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LORCA HOLDING LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

DRI, MNDC, FF

Introduction

This hearing was convened in response to the tenant's application to dispute a rent increase effective September 01, 2011, and for compensation to recover the rent increase paid for a period of 12 months after the rent increase was imposed, and to recover the filing fee associated with this application.

Both parties attended the hearing and provided testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the tenants entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started August 01, 2010 as a fixed term tenancy agreement for 2 years ending July 31, 2012, thereafter on a month to month basis. The payable monthly rent at the outset of the tenancy was agreed at \$2800.00 payable on the 1st. of every month. On June 27, 2011 the landlord gave the tenant a Notice of Rent increase on the approved form in the allowable increase amount for 2011 of 2.3% (\$64.40) and stating the increased rent would be payable starting September 01, 2011 in the new rent of \$2864.40. The parties agree the tenant paid the new rent from September 01, 2011 to August 2012 (12 months).

The tenant argued that the landlord was not permitted to impose a rent increase in accordance with the Act and an allowed percentage of the increase because the parties had a binding fixed term agreement to July 31, 2012, which in their determination was inclusive of a fixed amount for rent in the amount originally agreed on the tenancy agreement. The tenant claims recovery of the rent increase in the sum of \$772.80.

The landlord argued they consulted the Branch and their lawyer and determined the fixed term of the tenancy agreement does not operate to limit the amount for rent to the

length of the agreement, but rather, is guided by the provisions of Section 41, 42 and 43 of the Act irrespective of the fixed length of the agreement. In other words, the landlord argued they were permitted to impose a rent increase to the limit established by regulation regardless of the fixed term length of the tenancy agreement.

Both parties provided copies of the tenancy agreement and the Notice of Rent Increase dated June 27, 2011 (which is noted as hand-delivered to the tenant), and for the rent increase to take effect on September 01, 2011.

Analysis

Sections 41, 42 and 43 of the Act, in part, state as follows:

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

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.

Amount of rent increase

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.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

and

(5) 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 find there are no provisions in the Act or Regulations prohibiting an increase in the rent, within the parameters prescribed by the legislation, which apply to fixed term tenancy agreements, unless the parties agree to such a prohibition: allowing the rent to remain the same throughout the fixed term. In addition, Residential Tenancy Policy Guideline 30, respecting **Fixed Term Tenancies**, in the relevant part, states as follows:

Rent Increases and Fixed Term Tenancies

The rent increase provisions of the Legislation apply to fixed term tenancy agreements. If the parties so agree, the fixed term tenancy agreement may specify that the rent shall continue to be the same amount throughout the fixed term. The parties may not, however, agree that the rent will increase during the fixed term as this would potentially contravene the justified rent increase provisions of the Legislation.

The full text can be found at <http://www.rto.gov.bc.ca/documents/GL30.pdf>

Therefore:

I find the landlord gave the tenant the Notice of Rent Increase on June 27, 2011, and the rent increase took effect September 01, 2011. I find **Section 42(2)** of the Act states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. I find the Notice of Rent Increase should have established the new payable rent at least 3 months after the Notice was given – as described in the **Information for Landlords and Tenants** on the *Notice of Rent Increase Form* – establishing the effective date of the increase starting October 01, 2011. I find that **Section 42(4)** of the Act states that If a landlord's notice of a rent increase does not comply with the previous subsections (1) and (2), then the Notice takes effect on the earliest date that does comply with the Act.

As a result of all the above, I find the landlord was permitted to impose a rent increase during the fixed term length of the tenancy, provided it was within the allowable prescribed 2.3% and effective no sooner than October 01, 2013. I find that Section 42(4) of the Act automatically imposed the allowable increase of \$64.40 to take effect in compliance of the Act: October 01, 2011. Therefore, I find the tenant is entitled to recover the rent increase amount of \$64.40 paid for September 2011.

As the tenant was partially successful in their claim I grant them partial recovery of their filing fee in the amount of \$25.00, for a sum award to the tenant of **\$89.40**, without leave to reapply.

Conclusion

The tenant's application is granted in part, without leave to reapply.

I grant the tenant an Order under Section 67 of the Act for the amount of **\$89.40**. If

necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: March 07, 2013

Residential Tenancy Branch

