



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This Hearing was scheduled to hear the Tenant's application.

The parties gave affirmed testimony.

It was determined that the Tenant mailed the Notice of Hearing documents to the Landlord, via registered mail, on August 24, 2013.

Preliminary Matters

The Tenant's Application for Dispute Resolution indicates that he is seeking "other" relief. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section providing what order or decision is requested. In this case, I explained to the Tenant that I did not understand what relief he is seeking because he did not provide specific details in his Application. The Landlord's lawyer stated that he, too, was unsure what Order the Tenant is seeking. Therefore the Tenant's application for "other" is dismissed.

This Hearing was challenged because of a language issue and a bad phone connection with the Tenant's cell phone. I explained to the Tenant that I would consider an application to withdraw his Application, or to adjourn his Application in order to arrange for the assistance of an interpreter. The Tenant indicated that he wanted to proceed.

In his documentary evidence, the Tenant provided a copy of a Notice to End Tenancy for Landlord's Use. I asked the Tenant if he wished to cancel the Notice or if he was accepting the Notice and moving out of the rental unit. He submitted that the Notice was not served in the "normal way" and that it was posted to his door and sent by registered mail. He stated that the Landlord should have come to the Tenant and talked to him about wanting to end the tenancy. The Tenant stated that the Landlord did not say anything about ending the tenancy until after the Tenant would not agree to a rent

increase. At this point, the Landlord's lawyer stated that he accepts that the Tenant's application is to cancel the Notice to End Tenancy for Landlord's Use.

The Tenant was adamant that he just wants an explanation as to why the Landlord acted the way he did by issuing the Notice to End Tenancy. I asked the Tenant twice if he wanted to stay in the rental unit. His answers were, "The Landlord did not act in a normal way" and "whether we move out is not the problem".

The Landlord's lawyer suggested that the Tenant may want an apology from the Landlord. He stated that the Landlord was very sorry if the Tenant took any offence from the way in which the Landlord served the Notice to End Tenancy. The Tenant stated that he did not want an apology. He said he wanted me to tell him and the Landlord what I thought of how the Landlord was behaving. I explained to the Tenant that a Landlord can end a tenancy for the Landlord's Use of the rental unit and that he can serve the Tenant with the Notice to End Tenancy by registered mail or by posting the Notice to the Tenant's door. I told the Tenant that I would provide him with the sections of the Act that pertain to a Notice for Landlord's Use. I also told the Tenant that I would provide him with the sections of the Act that pertain to rent increases.

I suggested that the Tenant speak to an information officer at the Residential Tenancy Branch if he had any questions regarding the tenancy law with respect to these issues.

This Decision is accompanied by copies of Sections 49, 50, 51, and 52 of the Act; Part 3 of the Act; and Part 4 of the regulations. The Residential Tenancy Branch has also published a booklet of guidelines, which is available in several languages, and which provides basic information for landlords and tenants in BC. A link to the website where the booklet can be found is <http://www.rto.gov.bc.ca/content/publications/guides.aspx>.

Sections 49, 50, 51, 52 of the Act:

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) 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, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

(c) convert the residential property to strata lots under the *Strata Property Act*;

(d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

(f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 *[landlord's use of property]* or 49.1 *[landlord's notice: tenant ceases to qualify]*, the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 *[tenant's compensation: section 49 notice]*.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Form and content of notice to end tenancy

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
 - (e) when given by a landlord, be in the approved form.

Part 3 of the Act:

Part 3 — What Rent Increases Are Allowed

Meaning of "rent increase"

- 40** In this Part, "**rent increase**" does not include an increase in rent that is
- (a) for one or more additional occupants, and
 - (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) *[requirements for tenancy agreements: additional occupants]*.

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.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(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.

Part 4 of the Regulations:

Part 4 — Rent Increases

Annual rent increase

22 (1) In this section, "**inflation rate**" means the 12 month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect.

(2) For the purposes of section 43 (1) (a) of the Act [*amount of rent increase*], a landlord may impose a rent increase that is no greater than the percentage amount calculated as follows:

$$\text{percentage amount} = \text{inflation rate} + 2\%$$

(3) and (4) Repealed. [B.C. Reg. 234/2006, s. 17.]

[am. B.C. Reg. 234/2006, s. 17.]

Additional rent increase

23 (1) A landlord may apply under section 43 (3) of the Act [*additional rent increase*] if one or more of the following apply:

(a) after the rent increase allowed under section 22 [*annual rent increase*], the rent for the rental unit is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit;

(b) the landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that

(i) could not have been foreseen under reasonable circumstances, and

(ii) will not recur within a time period that is reasonable for the repair or renovation;

(c) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property;

(d) the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property, if the financing costs could not have been foreseen under reasonable circumstances;

(e) the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit.

(2) If the landlord applies for an increase under paragraph (1) (b), (c), or (d), the landlord must make a single application to increase the rent for all rental units in the residential property by an equal percentage.

(3) The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1):

(a) the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect;

(b) the rent history for the affected rental unit in the 3 years preceding the date of the application;

(c) a change in a service or facility that the landlord has provided for the residential property in which the rental unit is located in the 12 months preceding the date of the application;

(d) a change in operating expenses and capital expenditures in the 3 years preceding the date of the application that the director considers relevant and reasonable;

(e) the relationship between the change described in paragraph (d) and the rent increase applied for;

(f) a relevant submission from an affected tenant;

(g) a finding by the director that the landlord has contravened section 32 of the Act [*obligation to repair and maintain*];

(h) whether, and to what extent, an increase in costs with respect to repair or maintenance of the residential property results from inadequate repair or maintenance in a previous year;

(i) a rent increase or a portion of a rent increase previously approved under this section that is reasonably attributable to the cost of performing a landlord's obligation that has not been fulfilled;

(j) whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;

(k) whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has

(i) submitted false or misleading evidence, or

(ii) failed to comply with an order of the director for the disclosure of documents.

(4) In considering an application under subsection (1), the director may

(a) grant the application, in full or in part,

(b) refuse the application,

(c) order that the increase granted under subsection (1) be phased in over a period of time, or

(d) order that the effective date of an increase granted under subsection (1) is conditional on the landlord's compliance with an order of the director respecting the residential property.

(5) If the total amount of the approved increase is not applied within 12 months of the date the increase comes into effect, the landlord must not carry forward the unused portion or add it to a future rent increase, unless the director orders otherwise under subsection (4).

Conclusion

The Tenant's application for "other" is dismissed.

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: October 17, 2013

Residential Tenancy Branch

