



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, FF, O

Introduction

This hearing was convened in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on May 7, 2014. The Tenants had completed the second page of the Application with a number of additions and deletions and it was not clear which issues the Tenants were asking to be dealt with.

Both Tenants appeared for the hearing and clarified at the beginning that they were applying for the following issues on their Application:

- for the Landlord to comply with the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement;
- to suspend or set conditions on the Landlord’s right to enter the rental suite;
- for ‘Other’ issues identified during the hearing as an allegation of harassment by the Landlord’s agent; and
- recovery of the filing fee for the cost of making the Application.

The owner of the property (the “Landlord”) appeared for the hearing to represent himself and his agent, who is assigned to administer the tenancy (the “Landlord’s agent”). Both parties are named as Respondents on the Tenant’s Application.

The Landlord confirmed receipt of the Tenants’ written evidence as well as the Notice of Hearing documents for this hearing. The Landlords provided no written evidence prior to the hearing.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were given the opportunity to present written evidence, cross-examine the other party and make submissions to me. As a result, I have carefully considered the following evidence in this decision as follows.

Issue(s) to be Decided

- Is the Landlord obligated to follow the rent increase provisions of the Act and the regulation?
- Should the Landlord's agent's right to enter the rental unit be restricted?

Background and Evidence

The parties agreed that this tenancy started on May 1, 2013. Monthly rent is payable by the Tenants in the amount of \$750.00 on the first day of each month. At the start of the tenancy, the Tenants paid the Landlord a security deposit in the amount of \$375.00.

A written tenancy agreement was completed between the parties at the start of the tenancy and section 3 of the agreement shows that the box labelled "Year to Year" was selected by both parties.

The Landlord and Tenants disagreed with their interpretation on the nature of this tenancy. The Landlord submitted that as this is a year to year tenancy, the Tenants are required to sign a new agreement at the end of each yearly period. The Tenants submit that they should not have to sign a new tenancy agreement and that the Landlord is requesting this as a way to get out of the rent increase provisions of the Act.

The Tenants submitted that the Landlord's agent has engaged in a course of action whereby he has harassed and threatened them with eviction if they don't sign a new tenancy agreement.

The Landlord testified that the Tenants were offered a new tenancy agreement with an addendum clause that would allow the Landlord to increase the rent by \$50.00 per year thereafter.

The Tenants submitted that when they refused to sign the new tenancy agreement and asked the Landlord's agent to provide them with a proper rent increase notice and the three month period to pay the allowable rent increase, the Landlord's agent became abusive and made obscene hand gestures towards the Tenants in the presence of their grandchildren.

The Landlord was not aware of this particular incident occurring. However, the Tenants have provided written letters to the Landlord explaining their strained relationship with the Landlord's agent. The Landlord explained that he would seek to assign a new agent

to act on his behalf in relation to any physical interactions that may be necessary with the Tenants in the administration of the tenancy.

Analysis

I firstly turn my mind to the type of tenancy that exists in this case. The Act defines a fixed term tenancy as one that “specifies the date on which the tenancy ends”.

The written tenancy agreement provided as evidence shows that this tenancy is on a year to year basis. As no end date is specified in the written agreement, I find that this tenancy is a periodic tenancy which means that it continues until it is ended in accordance with the Act. Therefore, the rent increase provisions stipulated by Part 3 of the Act and Part 4 of the Residential Tenancy Regulation apply to this tenancy and the Landlord must comply with them.

This includes issuing the Tenants with a **Notice of Rent Increase** on the approved form (available from the Residential Tenancy Branch) and allowing a period of **at least three rental months of notice** before the Tenants are required to pay the allowable increase, which for 2014 is **2.2%**. I have reproduced these provisions for the parties below. The Landlord is also cautioned that unless the Tenants consent in writing to pay an amount above the legal allowable rent increase, the Landlord must adhere to the amounts stipulated in the rent increase provisions and an addendum to a tenancy agreement which stipulates that Tenants will pay \$50.00 extra each year in a periodic tenancy is an unconscionable term, meaning that even if the Tenants had consented to this term, it would not be enforceable under the Act. Furthermore, Section 5 of the Act prohibits parties from contracting outside of the Act and any such prohibited contracts made have not effect.

Part 3 of the Act - 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 Rent Increases (Residential Tenancy Regulation)

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).

[am. B.C. Reg. 234/2006, s. 18.]

The Landlord must also consider the deeming provisions of Section 90 of the Act when giving any notice to the Tenants. This explains when a document served under the Act is deemed to have been received based on the manner in which it is served to the party.

In relation to suspending or setting conditions on the Landlord's right to enter the rental unit, I find that the root cause of the strained relationship between the Tenants and the Landlord's agent is due to the lack of knowledge of the Act by the Landlord and his agent.

By ordering the Landlord and his agent to comply with the Act in terms of the rent increase provisions and the tenancy agreement and encouraging them to seek information under the Act before acting in this tenancy, I am satisfied that no further issues will arise as the Landlord agreed to use a different agent to have any physical interaction with the Tenants. Therefore, there is no requirement at this moment in time to suspend or set conditions on the Landlord's right to enter the rental suite.

I also encouraged the parties to communicate with each other in writing and explained to the Landlord that he can assign any person, other than his current agent, specifically for duties that may require an interaction with the Tenants.

The Landlord agreed to comply with the Act and to limit any contact with the Tenants and his agent as much as practicable. As a result, the Tenants withdrew their Application to recover their filing fee in an effort to demonstrate their willingness to work with the Landlord in continuing a successful tenancy.

Conclusion

Pursuant to the authority afforded to me by Section 62(3) of the Act, I order the Landlord and his agent to comply with Part 3 of the Act and Part 4 of the Residential Tenancy Regulation, in relation to the rent increase provisions as reproduced above.

The Tenant's remaining Application 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: June 30, 2014

Residential Tenancy Branch

