



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten Day Notice to End Tenancy for Unpaid Rent and also seeking to dispute an additional rent increase.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and make submissions during the hearing. I have considered all of the evidence properly served and the verbal testimony given by the parties during the hearing.

Issue(s) to be Decided

Should the 10-Day Notice to End Tenancy for Unpaid Rent be cancelled?

Is the tenant entitled to an order cancelling a noncompliant rent increase?

Background and Evidence

The tenancy began on April 10, 2013.

The tenant testified that their rent has recently been increased by the landlord from \$410.00 to \$1,195.00. The tenant stated that they can't afford to pay the higher rent. According to the tenant, the landlord based the rent amount on their monthly income, but had calculated this incorrectly. The tenant's position is that this rent increase is not compliant with the Act and the tenant seeks an order to restore the monthly rental rate back to \$410.00.

The tenant testified that when they failed to pay the full rent of \$1,195.00 being demanded by the landlord they received a 10-Day Notice to End Tenancy for Unpaid Rent dated September 10, 2014. A copy of the Notice is in evidence. The tenant is requesting that this Notice be cancelled.

Submitted into evidence is a copy of the tenancy agreement, copies of communications and other documents.

The landlord's position is that they are an organization that offers affordable housing with rent based on the accepted tenant's income. The landlord testified that the tenant is required to verify their income so that the rent can be validly based on the tenant's financial entitlement to the appropriate rental rate and the tenant's rental rate was calculated based on the data that was provided by the tenant.

The landlord testified that, because the tenant failed to pay the rent, a 10-Day Notice to End Tenancy for Unpaid Rent was therefore served on the tenant.

Analysis

Section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under the Act or the tenancy agreement.

Section 58 of the Act also states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) *rights and obligations under the terms of a tenancy agreement*. (My emphasis)

In regard to increasing rent, section 43 of the Act states that a landlord may only impose a rent increase up to the amount calculated in accordance with the regulations or agreed to by the tenant in writing. The Act provides that a Notice of rent increase must be on the prescribed form.

According to the Act, 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.

However, if the rental rate of the units is related to the tenant's income, section 2(g) of the Residential Tenancy Regulation states that rental units operated by a housing society or non-profit housing corporation that has an agreement with the government of British Columbia; the British Columbia Housing Management Commission or the Canada Mortgage and Housing Corporation are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act *[assignment and subletting, rent increases]*.

In the case before me I find that rent originally being charged, in the amount of \$410.00 merely represented the tenants contribution towards the actual market rental rate and the reduced rent charge had been based on the tenant's income at that particular time.

In regard to the rate calculated by the landlord, I find that this landlord is not bound by section 42 and 43 of the Act with respect to rent increases. In addition, I find that the determination of the rental rate, and the tenant's proportionate contribution, is not a matter under the jurisdiction of the Residential Tenancy Branch to determine.

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due.

When a tenant fails to comply with section 26 of the Act, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it.

I find that this section of the Act also provides that, within 5 days after receiving a notice under this section, the tenant may cancel the Notice by paying the overdue rent, in which case the notice has no effect.

In this instance I find that the tenant was in arrears at the time the Notice was served and the tenant did not pay these arrears. I find that the tenant continued to accrue additional arrears for subsequent months afterward.

Because the tenant has not paid all of the outstanding rental arrears, I find that there is no valid basis to cancel the 10-Day Notice and the tenant's application must therefore be dismissed.

Based on the evidence and the testimony discussed above, I hereby dismiss the tenant's application.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The tenant is not successful in the application and the request to cancel the 10-Day Notice to End Tenancy for Unpaid Rent is dismissed. The landlord is granted an order of possession on request.

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: November 06, 2014

Residential Tenancy Branch

