



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BARAFIELD REALTY CO/ GATEWAY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, DRI

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") pursuant to section 46; and
- an order regarding a disputed additional rent increase pursuant to section 43.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. Tenant BB ("the tenant") attended on behalf of both tenants. Before the conclusion of this hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Background and Evidence

This fixed term tenancy began on November 1, 2011 with a rental amount of \$865.00 to be paid on the first of each month. The tenancy continued as a month to month tenancy. The rental amount has been increased at least twice over the course of the tenancy. The current rental amount is \$880.00 to be paid on the first of each month. The landlord holds a security deposit of \$425.00 paid equally by the two tenants on November 5, 2011.

Tenant BB confirmed that the landlord served him with the 10 Day Notice to End Tenancy on February 19, 2015 by posting the notice on the rental door. The tenant testified that his co-tenant is still residing in the rental unit with him and that both parties received and reviewed the notice. In accordance with section 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice February 22, 2015, 3 days after the notice was posted. Tenant BB testified that he personally served the landlord, at their offices, with the dispute resolution hearing package and notice for hearing on February 23, 2015. The landlord confirmed receipt of the notice. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's notice and hearing package.

The tenant initially applied for cancellation of the 10 Day Notice to End Tenancy. The landlord testified that the tenant has not paid the rental increase of \$15.00. Notice of this rental increase was served to the tenant on March 26, 2014. He provided a copy of that notice in his materials.

The notice provided for an increase of less than 2% to take effect July 1, 2014. The landlord testified that, since that date, the tenant has continued to pay \$865.00, leaving an outstanding amount of \$ 120.00 for 8 months and, now, an additional \$15.00 with 1 further month of rental increase outstanding (March 2015).

The tenant testified that he did not receive the notice of the rent increase. However, the tenant provided a copy of the rent increase dated March 26, 2014 in his documentary materials for this hearing. The tenant then testified that he had forgotten what materials he had provided. The tenant submitted that he believed the rent increase was unauthorized as the landlord had increased the rent less than a year before this increase was implemented. The tenant had no other rent increase forms in evidence or available to submit for consideration. The landlord acknowledged one previous increase during the tenancy in November 2012. The landlord issued a 10 Day Notice when the parties were unable to resolve the matter.

Both parties testified that the tenant is assisted with payments through the Ministry of Social Development ("the Ministry") and that, with the proper documents provided to the Ministry, they will pay the increase and any arrears.

Analysis

During the hearing, the relevant legislation was reviewed briefly. The *Act* and Policy Guideline No. 37 provide that a tenant's rent cannot be increased unless the tenant has been given 3 months' prior, proper notice in the approved form. The tenant's rent can only be increased once every 12 months by an amount set by the Residential Tenancy Branch. A rent increase that falls within the limit permitted cannot be disputed.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. Given the agreement reached between the parties during the proceedings, I find that the parties have settled their dispute and the following records this settlement as a decision:

The Parties mutually agreed as follows:

1. The tenants agreed to pay the outstanding rental amount of \$135.00 to the landlord as follows;
 - a. The tenants agreed to pay the landlord \$25.00 per month through his Ministry funds from April 1, 2015 to November 1, 2015.
2. If the tenants do not make a payment of \$25.00 above and beyond the rental amount required under the residential tenancy agreement by June 1, 2015, this agreement to continue the tenancy is null and void, this tenancy will end, and the tenants will vacate the rental unit.

3. In the event that the tenants comply with the monetary terms as described in Condition 1 of this agreement, the landlord withdraws the 10 Day Notice, which would be of no force or effect beyond June 1, 2015.
4. If monthly payments of \$25.00 are made to the landlord and the rent is from hereon paid in the full amount of \$880.00, the tenancy will continue.
5. The landlord will provide all documents evidencing a rental increase to the tenants.
6. The tenants will provide all documents regarding a rental increase to the Ministry.
7. These terms comprise the full and final settlement of all aspects of this dispute for both parties.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenants do not comply with the monetary terms of their agreement **and** fail to vacate the rental premises by June 1, 2015, in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order in the event that the tenants do not vacate the premises in accordance with their agreement. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

To give effect to the settlement reached between these parties, I issue a monetary order in favor of the landlord in the amount of \$135.00 dated June 1, 2015, to be used only if the tenant fails to comply with the payment arrangement provided above by June 1, 2015. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible after any failure to abide by the monetary terms of their settlement agreement. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 27, 2015

Residential Tenancy Branch

