



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants disputing an additional rent increase, for an order cancelling a notice to end tenancy for unpaid rent or utilities, and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the hearing, however one provided affirmed testimony. The named landlord also attended and called one witness and both gave affirmed testimony. The parties also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to question each other and the witness respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the tenants established that rent has been increased contrary to the *Residential Tenancy Act*?
- Has the landlord established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on April 1, 2015, although both tenants previously resided in the complex prior. Rent in the amount of \$370.00 per month for this rental unit is due on the 1st day of each month. One of the tenants moved out of a rental unit and moved into the rental unit of the other tenant, which increased the rent. The landlord is not the landlord of the rental unit; the landlord is a non-profit housing society which is governed by BC Housing, and therefore, the

regulations to the *Act* with respect to increases in rent do not apply. A copy of the tenancy agreement has been provided.

The tenants were notified in writing on February 24, 2015 and again on March 1, 2015 that rent had been increased after an operational review by BC Housing, who said that due to costs, rent had to be increased. However the tenants didn't pay the increased amount but continued to pay the lower amount. The rent increased from \$370.00 per month to \$575.00 per month.

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 5, 2015 by leaving it in the mailbox of the rental unit. A copy of the notice has been provided and it is dated April 5, 2015 and contains an effective date of vacancy of April 18, 2015 for unpaid rent in the amount of \$575.00 that was due on April 1, 2015.

The landlord's witness testified that she is one of the directors of the board, which is a non-profit housing society.

At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$185.00.

The tenants are currently in arrears of rent the sum of \$410.00 for the difference in the new amount of rent of \$575.00 per month and the old amount of \$370.00 for the months of April and May, 2015. The landlord is currently owed \$205.00 for each of those months, for a total of \$410.00.

The landlord has also provided a copy of a notice from the landlord society showing the rental rates for bachelor, 1 bedroom and oversized units effective October 1, 2014 and testified that a copy was provided to the tenants as well as being posted in the laundry room and other common areas of the complex. The landlord has not charged the increase until the 2 parties moved in together, and that formed a new tenancy subject to the increased amount for an oversized unit at \$575.00 per month.

The board has only existed for 2 years. The previous board resigned and turned over the complex to BC Housing, but tenants weren't happy with that and disputed it. A new board was elected and BC Housing told the board that in order to maintain the property, rent had to be increased. As a result, the board decided that effective October 1, 2014 when new tenancy agreements were signed, they would be under the new amounts, but were not increased effective that date except for new tenancies. The increase was only given to the tenants when one tenant moved in with the other. A new tenancy

agreement had to be signed, and therefore the increase would apply to it, although a new tenancy agreement has not been signed.

The landlord's evidentiary material also contains a BC Housing document entitled "Income requirements" which sets out regions within the province and amounts for bachelor, 1 bedroom, 2 bedroom, 3 bedroom and 4 bedroom units.

The tenant testified that he has moved from one unit to another on more than one occasion since his tenancy began in 2005 and paid a security deposit of half a month's rent which increased as he moved to be half a month's rent for each unit. Each year rent has been increased on a percentage basis according to the *Residential Tenancy Act* and each time the tenant moved into a more expensive unit the landlord collected the increased amount of security deposit. The tenant moved into this unit on May 1, 2006. The hot water for the rental unit comes from the laundry room and the landlord added \$40.00 per month for hot water in addition to the \$300.00 per month for rent. The rent increased on October 1, 2014 to \$370.00.

Although copies have not been provided, the tenant testified that the landlord served the tenant with Notices of Rent Increases in the form required under the *Act* as follows:

- Current rent of \$319.55 increased by \$10.45 for new rent \$330.00 effective June 1/10;
- May 23, 2011 current rent \$330.00, increased by \$8.00 to \$338.00 effective July 1, 2011;
- \$338.00 increased to \$353.00 effective July 1, 2012;
- July 1, 2012 current rent was \$353.00 and increase was 3% to \$363.00 effective October 1, 2013; and
- October 1, 2014 to increase was \$7.00 to \$370.00.

The tenant also testified that the tenancy agreement does not provide that rent will increase if another tenant moves in. BC Housing took over after CMHC was dissolved, and the complex is only with BC Housing until the mortgage is paid, which is soon.

The tenant also denies receiving the landlord's notice of rent increases which the landlord's witness stated was posted in the laundry room and other common areas, but the tenant receives copies of the Minutes from the Board of Directors and it was mentioned in there.

When asked why the tenants didn't sign a new tenancy agreement, the tenant responded that they didn't have to.

Analysis

Where a tenant disputes a landlord's notice to end a tenancy, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice, and I find that it is in the approved form and contains information required by the *Act*.

With respect to the reason for issuing it, there is no question that the amount of rental arrears is the difference of the amount of rent payable prior to the parties moving in together and after they moved in together. It is also agreed that both tenants were tenants of the landlord immediately prior to moving in together and that one of the tenants has resided in this particular rental unit since May 1, 2006. The tenants dispute the rent increase, and if I find that the increase was not lawful, the notice to end the tenancy must be cancelled.

I have reviewed the evidentiary material and note that the tenancy agreement signed by the tenant who originally rented the rental unit states that the landlord and tenant, “,, will be regulated by the terms and conditions of the BC Residential Tenancy Act.”

The regulations to the *Residential Tenancy Act* state:

Exemptions from the Act

2 Rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the *Act* [assignment and subletting, rent increases] if the rent of the units is related to the tenant's income:

- (a) the British Columbia Housing Management Commission;
- (b) the Canada Mortgage and Housing Corporation;
- (c) the City of Vancouver;
- (d) the City of Vancouver Public Housing Corporation;
- (e) Metro Vancouver Housing Corporation;
- (f) the Capital Region Housing Corporation;
- (g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:
 - (i) the government of British Columbia;
 - (ii) the British Columbia Housing Management Commission;
 - (iii) the Canada Mortgage and Housing Corporation.

In order to be exempted from the increased rent provisions under the *Act*, the rental unit must operated by the BC Housing Management Commission or other entity described above, and the amount of rent must be related to the tenants' income. The landlord has the obligation to satisfy me of those issues if the landlord wants me to uphold the notice or dismiss the tenants' application.

In the circumstances, I am not satisfied that the rental amount has anything to do with the income of either tenant or both tenants. The notice that the landlord's witness testified was posted in the laundry room and common areas of the rental complex contains amounts of rent for the size of the rental unit. Further, the regulations do not state that the amount of rent payable is determined by the number of people residing in the rental unit, nor does the tenancy agreement.

The notice to end tenancy is hereby cancelled and the tenancy continues. The landlord may raise the rent in accordance with the regulations.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee. I hereby order the tenants to reduce a future month of rent payable by that amount as recovery.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 5, 2015 is hereby cancelled and the tenancy continues.

I further order that rent in the amount of \$370.00 per month is payable under the tenancy agreement, and the landlord is entitled change the rent in accordance with the regulations to the *Residential Tenancy Act*.

I hereby order the tenants to reduce rent by \$50.00 for a future month as recovery of the filing fee.

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: May 27, 2015

Residential Tenancy Branch

