



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, OLC, MNDC, FF

Introduction

In the first application, by filing number, the tenants seek to cancel a \$75.00 rent increase and to recover \$5000.00 of rent paid in advance. They also seek an order that the landlord comply with the law in that regard.

In the second application the landlord seeks to recover \$1600.00 for the cost of her agent Ms. S. to prepare for, attend at and serve as a translator during this hearing, as well as for out of pocket expenses incurred in hearing preparation.

Issue(s) to be Decided

Does the relevant evidence presented during this hearing show on a balance of probabilities that either side is entitled to any of the relief requested?

Background and Evidence

The rental unit is a two bedroom condominium apartment in a condominium apartment complex.

The tenancy started in June 2014. There was a written tenancy agreement in the form offered by the Residential Tenancy Branch showing that the tenancy was for a one year fixed term ending June 1, 2015. The agreement indicates that after the fixed term the tenancy would continue as a month to month basis or another fixed length of time.

The monthly rent was \$1400.00, due on the first of each month. The tenants paid a \$700.00 security deposit which the landlord still holds.

It does not appear that the third "tenant" Ms. Z.M. signed that tenancy agreement.

At the start of the tenancy the landlord required and the tenants paid \$8400.00 as six months' rent in advance and give six post dated cheques for rent after the first six months. The \$8400.00 was applied over the first six months of the one year term and the post dated cheques were applied accordingly for the final six months.

In May 2015 the parties negotiated an "extension" of the tenancy agreement in a written document entitled "EXTENSION OF RESIDENTIAL LEASE AGREEMENT." Two relevant terms of the extension provide:

The term of the said lease is extended [sic] for a period of further 14 months commencing on 1/June/2015 and terminating on 1/Aug/2016.

During the extended term, the monthly rent agreed upon in said lease is increased by 5%, and therefore Tenant will pay Landlord a monthly rent of \$1475.00

At the bottom of the agreement, written by hand and signed, it says:

I [landlord name redacted] received the rent of first 6 months (June to November 2015) as two cheques by the number 39 (amount of \$5000) and number 40 (amount \$3850) wich [sic] makes the total amount of \$8850. The rent of next 8 months I received as cheques by numbers 41, 42, 50, 44, 45, 46, 47, 48 for the first of each month form December 2015 to July 2016

The first cheque was honoured. The second cheque, for \$3850.00 was not. The tenants say that after learning of their legal rights the cheque was cancelled.

The tenant Ms. M.K. testifies that they were unfamiliar with the law and were compelled to sign the extension agreement and pay the rent in advance because the landlord's husband, who conducted all the negotiations from the beginning, said that otherwise they would have to move.

The landlord's husband did not give evidence.

The landlord's agent says that the landlord intended to move in after the first fixed term but because two of the tenants were in difficult health, relented and let them stay on the terms set out in the extension.

The tenant Ms. M.K. replies that the landlord never said she wanted to live there and had told her she could not afford to live in the condominium.

Analysis

The *Residential Tenancy Act* (the “*Act*”) sets out specific provisions regarding fixed term tenancies, rent increases and payments of money to secure future obligations of a tenant.

Section 5 of the *Act* states that terms of the *Act* cannot be avoided. It reads,

This Act cannot be avoided

- 5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Regarding fixed term tenancies, s. 44(3) of the *Act* provides,

- (3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Regarding rent increases, Part 3 of the *Act* provides,

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.

The Rent Increase

Had the parties not entered into the extension agreement, the tenancy would have continued on as a month to month tenancy at the same rent. As a year had passed since the start of the tenancy, the landlord could have imposed a rent increase in accordance with Part 3, up to the amount permitted by regulation, on giving three month's notice.

The extension agreement makes it clear that the parties agreed to the rent increase for the extension period. The rent increase provisions in the *Act*, s. 43 (1)(c), above, permit an increase up to an amount "agreed to by the tenant in writing."

There is a heavy burden on a tenant to show that there was coercion or duress forcing an agreement.

In this case the tenants have not established on a balance of probabilities that there was coercion or duress as to have forced them into signing the agreement. At best I can be said that the landlord threatened to evict them if they did not sign. I find that had the tenants inquired of their legal rights they would have quickly determined that the continuation of the tenancy was not in immediate jeopardy and then they might not have agreed to the final form of the extension agreement, but a failure to determine one's legal rights beforehand is not a defence against enforcement of the terms of an otherwise legal agreement.

I find that the tenants agreed to the new rent of \$1475.00 per month and that they are bound by that agreement.

Rent in Advance

A landlord in British Columbia is not permitted to demand rent for future months of a tenancy. Such money is money that is to be held as security for a tenant's liability or obligation to pay rent in the future and is a "security deposit" within the definition ascribed to it in s. 1 of the *Act*.

The *Act*, s. 19 limits the amount of a security deposit to one-half month's rent.

I find that the landlord was not entitled to demand rent in advance under either the initial tenancy agreement or the extension agreement.

Section 19(2) of the *Act* states that if a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

The tenants paid future rent in advance under the initial agreement but it has all been applied to rent and they are not entitled to any of it back.

The tenants have paid a total of \$5000.00 as future rent in advance under their tenancy commencing June 1, 2015. The amount of \$2950.00 of that sum has been applied to rent for June and July and cannot be fairly recovered by them now.

There remains an outstanding amount of \$3050.00 on the tenants' advanced rent payment. The tenants are entitled to a monetary award against the landlord for that amount. They may, if they choose, offset the amount award and remaining unpaid against any rent as it comes due.

The Landlord's Claim for Costs

The landlord's agent states that her services, including expenses will be \$1600.00 and seeks recovery of that amount. Even had the landlord been fully successful in opposing the tenants' claim, a residential tenancy arbitrator does not have jurisdiction to award items in the nature of "fees and disbursements" incurred in the dispute resolution process, but is limited to awarding recovery of any filing fee. The landlord's claim for fees and disbursements must be dismissed.

An order that the landlord comply with the *Act* or tenancy agreement is not required.

Conclusion

The tenants' application is allowed in part. I award them recovery of \$25.00 of the filing fee for a total award of \$3075.00. There will be a monetary order against the landlord in that amount.

The landlord's application is dismissed.

It would appear that the landlord has issued a two month Notice to End Tenancy for landlord use of property. The tenants' have disputed that Notice and a hearing is set for August 2015. I declined to hear that issue at this hearing because the issue had not been fairly raised on the material before me. I would counsel the parties to obtain advice about a landlord's power to issue such a Notice during the term of a fixed term tenancy.

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: July 09, 2015

Residential Tenancy Branch

