



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI OLC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on June 12, 2015 disputing a rent increase and to request an Order to have the Landlord comply with the Act, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the Landlord, the Tenant and the Tenant's Advocate/Assistant. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony. The Landlord confirmed receipt of the Tenant's application and evidence. No issues were raised regarding service or receipt of that evidence. The Landlord stated that she did not serve evidence in response to the Tenant's application.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) Is the Notice of rent increase valid?
- 2) Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

Background and Evidence

The undisputed evidence was the Tenant had occupied a room in this motel since approximately 2012. Rent was payable in the amount of \$875.00 and the Tenant paid a security deposit of \$312.50.

The Tenant submitted that he originally resided in unit # 51. He read into evidence a form that he had signed in 2012 listing the amount of his rent being \$775.00 and security deposit of \$312.50. He submitted that the form did not indicate a rental unit or room number.

The Tenant stated that unit #51 did not have a working telephone so on May 1, 2015 he moved into unit # 57. No new written agreement was entered into and no new security deposit was required to be paid.

The ownership of the motel changed as of June 2, 2015 at which time the new Landlord took over management of the motel. The Landlord read into evidence from a document that she referred to as an "Application" which included the same information that the Tenant had read, rent of \$775.00 and security deposit of \$312.50. She confirmed that this document did not list a unit or room number.

The Landlord indicated that she had a copy of a receipt that listed a unit number of 51. She then stated that it could be read as # 57. She then submitted that she did not have documents that specifically indicated the Tenant changed units and noted that this would have taken place prior to her being brought on to manage the hotel. She confirmed that there have been long term tenants residing in the motel as well as motel guests.

The Tenant made application to dispute a notice of rent increase that was to be effective on June 30, 2015. The Tenant argued that improper notice was given and the increase amount was an illegal amount. The Tenant vacated the property as of July 31, 2015.

The Landlord submitted that at the time she served the notice of rent increase she was not aware that she was required to use a specific form for the Notice. She indicated that she now knew a specific form was required to be used for a rent increase.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

An application to rent is not a tenancy agreement. When a tenant moves from one rental unit to another a new tenancy agreement is formed either verbally or in writing. Therefore, in absence of documentary evidence to prove the contrary, I find the Tenant had been occupying unit # 57 under a verbal tenancy agreement and the terms of that verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*. I further conclude that the Tenant's security deposit of \$312.50 was transferred from his tenancy in unit # 51 to his tenancy for unit # 57.

The undisputed evidence was the Landlord issued a notice of rent increase that was not in the approved form, as required by section 42 of the Act. Accordingly, the notice of rent increase is cancelled and is of no force or effect.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends on the date the tenant vacates or abandons the rental unit.

The Tenant disputed the Notice of rent increase and then vacated the rental unit ending the tenancy as of July 31, 2015, pursuant to section 44(1) (d) of the Act.

Conclusion

The Tenant was partially successful with his application as the Notice of rent increase was found to be invalid and of no force or effect. As this tenancy ended July 31, 2015, I find the Tenant's request to Order the Landlord to comply with the Act, regulation or tenancy agreement to be rendered moot.

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: August 12, 2015

Residential Tenancy Branch

