



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC; DRI; FF

Introduction

This is the Tenants' application to dispute an additional rent increase; for an Order that the Landlord comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

It was determined that the Tenants served the Landlord with their Notice of Hearing documents and copies of their documentary evidence, by hand, on June 9, 2015, at 7:13 p.m. The Landlord did not provide any documentary evidence.

Issues to be Decided

- Did the Landlord serve the Tenants with a valid Notice of Rent Increase?
- Did the Landlord serve the Tenants with a valid Notice to End Tenancy?
- Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on April 1, 2012. Current monthly rent is \$950.46, due on the first day of each month. The Tenants paid a security deposit in the amount of \$450.00 at the beginning of the tenancy.

The Tenants testified that the Landlord wanted the Tenants to pay an additional \$95.00 per month because there is an additional occupant in the rental unit, the Tenant's son, born January 1, 2015. The Tenants stated that on June 1, 2015, the Landlord gave them a letter stating that they would have to move out of the rental unit by June 30, 2015, unless they paid the additional \$95.00 per month rent. A copy of the letter was provided in evidence.

The parties agreed that there is no clause in the tenancy agreement allowing for additional rent for additional occupants.

Analysis

Sections 40 to 43 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.

Sections 22 and 23 of the regulation provides:

Part 4 — Rent Increases

Annual rent increase

- 22 (1) In this section, "**inflation rate**" means the 12 month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect.
- (2) For the purposes of section 43 (1) (a) of the Act [*amount of rent increase*], a landlord may impose a rent increase that is no greater than the percentage amount calculated as follows:
percentage amount = inflation rate + 2%
- (3) and (4) Repealed. [B.C. Reg. 234/2006, s. 17.]

[am. B.C. Reg. 234/2006, s. 17.]

In this case there is no term in the tenancy agreement allowing for additional rent for additional occupants, and therefore the Landlord cannot increase rent for additional occupants. The Landlord is at liberty to file an application for an additional rent increase under Section 43(3).

I find that the Landlord did not provide the Tenants with Notice of a Rent Increase that complies with Section 42(3) of the Act.

Therefore, I find that the Landlord did not serve the Tenants with a valid Notice of Rent Increase. I find that rent continues to be \$950.46 per month until such time as the Landlord

provides the Tenants with a Notice that complies with Sections 40 – 43 of the Act and Section 22 of the regulation.

Section 52 of the Act provides:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I find that the Landlord's letter dated June 1, 2015, does not comply with Section 52(b) and (e) of the Act and therefore is not a valid Notice to End Tenancy. In addition, if the Landlord wishes to end the tenancy, he must comply with Sections 46 to 49, which ever applies. Of course, the parties may agree in writing to end the tenancy (a mutual agreement to end the tenancy on a date agreed upon by the parties).

The Tenants have been successful in their Application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

The Tenants may **either** deduct **\$50.00** from future rent due to the Landlord, **or** serve the Landlord with the enclosed Monetary Order, which may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order 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: August 20, 2015

Residential Tenancy Branch

