



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, CNC, DRI, MNDC, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied:

- to set aside a Notice to End Tenancy for Unpaid Rent;
- to set aside a Notice to End Tenancy for Cause;
- to dispute a rent increase;
- for a monetary Order for money owed or compensation for damage or loss; and
- to recover the fee for filing this Application for Dispute Resolution.

At the outset of the hearing the Tenant withdrew the application to set aside a Notice to End Tenancy for Unpaid Rent and to set aside a Notice to End Tenancy for Cause.

The female Tenant stated that on July 03, 2015 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord and that on July 13, 2015 the amended Application for Dispute Resolution was personally served to the Landlord. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing.

Issue(s) to be Decided

Has there been a rent increase that does not comply with the *Act* and, if so, is the Tenant entitled to recover payments made as a result of that increase?

Background and Evidence

The female Tenant stated that:

- this tenancy began on July 01, 2013;
- she did not sign a tenancy agreement;
- when the tenancy started she agreed to pay monthly rent of \$500.00;
- when the male Tenant moved into the rental unit the Landlord told her the rent was increasing to \$600.00 per month;

- she was not given a written notice of the rent increase;
- she did not agree to the rent increase, in writing;
- she has paid the increased rent for the period between September 01, 2014 and August 31, 2015; and
- she wishes to recover the overpayment of rent, in the amount of \$1,200.00.

Analysis

Section 41 of the *Act* requires landlords to comply with the *Act* when imposing rent increases.

Section 42 of the *Act* stipulates that:

- a landlord must not impose a rent increase for at least 12 months after the date on which the tenant's rent was first established under the tenancy agreement if the tenant's rent has not previously been increased or if the tenant's rent has previously been increased, the effective date of the last rent increase;
- a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase; and
- a notice of a rent increase must be in the approved form.

Section 43(1) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director on an application under subsection (3), or agreed to by the tenant in writing.

On the basis of the undisputed evidence, I find that the Landlord increased the rent by \$100.00 on September 01, 2014, which is an increase of 20%. The allowable rent increase for 2014 allowed by the regulations was 2.2%.

As the rent increase imposed by the Landlord on September 01, 2014 exceeds the allowable increase for 2014; the undisputed evidence is that the Tenant did not agree to a rent increase, in writing; and the absence of any evidence to show that the director authorized the Landlord to increase the rent by \$100.00, I find that the increase does not comply with section 43(1) of the *Act*.

Section 40 of the *Act* stipulates that the term "rent increase" does not include an increase in rent that is for one or more additional occupants if that increase is authorized in the tenancy agreement. As the undisputed evidence is that the Tenant did not sign a tenancy agreement, I find section 40 of the *Act* does not apply.

On the basis of the undisputed evidence, I find that the Tenant has paid the rent increase of \$100.00 for the period between September 01, 2014 and August 31, 2015, which is twelve months. Section 43(5) of the *Act* authorizes a tenant to recover a rent increase that does not comply with the legislation. I therefore find that the Tenant is entitled to recover the rent increase of \$100.00 that was paid for 12 months, which is \$1,200.00.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion

The Tenant has established a monetary claim, in the amount of \$1,250.00, which includes a rent refund of \$1,200.00 and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Tenant a monetary Order for \$1,200.00. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province 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: September 04, 2015

Residential Tenancy Branch

