



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, OLC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel an additional rent increase and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by both tenants and the landlord. The parties provided affirmed testimony.

During the hearing the tenants testified that they had not received any evidence from the landlord. I noted that there was no evidence from the landlord on file. The landlord could not recall the date he served either the tenants or the Residential Tenancy Branch with his evidence. The landlord described what documents he provided which included confirmation from his financial institution that the tenants had been paying the rent increase and a copy of the rent increase notice that is the subject of this dispute. Neither party requested an adjournment to allow for the re-service of the landlord's evidence.

I note also that both parties provided substantial testimony regarding other ongoing issues of the tenancy, however, this decision records and refers only to relevant evidence and testimony relating to the additional rent increase and 10 Day Notice to End Tenancy for Unpaid Rent.

During the hearing the landlord did not request an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to dispute a notice of rent increase; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 43, 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants submitted into evidence a copy of a tenancy agreement signed by the parties on September 18, 2006 for a month to month tenancy beginning on October 1, 2006 for the monthly rent of \$1,100.00 due on the 1st of each month with a security deposit of \$550.00 paid.

The tenants submit that in mid-July 2014 they received a Notice of Rent Increase that is undated and unsigned from the landlord for a rent increase in the amount of \$50.00 to be

effective on October 1, 2014. A copy of this Notice was submitted into evidence. The tenants also submitted in evidence a second Notice of Rent Increase dated June 30, 2015 increasing the rent to \$1,178.75 effective October 1, 2015.

The tenants submit that the 2014 Notice did not comply with the requirements set out in Section 42 and 43 of the Act. Specifically the tenants submit that the allowable amount of increase for 2014 was 2.2% and the landlord increased the rent by 4.4%. The tenants also submit that the Notice was unsigned and undated.

The tenants submit that in addition the landlord did not provide the Notice until mid-July 2014 which meant that the landlord was required to not start the rent increase until November 2014 but they started paying it in October 2014.

The tenants submit that they had met with the landlord in September 2014 to discuss some issues related to the tenancy in an effort to smooth things over the decided to pay the additional would pay the additional increase. The tenants submit that as a result of other issues going on in the tenancy they decided that they could no longer pay the additional rent increase.

As a result the tenants paid only \$892.00 to the landlord for July 2015 rent. The tenants provided the landlord with a written explanation of how they determine they would pay this amount.

The tenants calculated that the maximum increase allowed for 2014 would have increased the rent to \$1,124.20. They determined, on a month to month basis, the overage was \$25.80. The tenants submit that they reduced the amount paid on July 1, 2015 by this amount for 9 months (October 2014 to June 2015) or a total of \$232.20.

In response, the landlord issued, on July 2, 2015, a 10 Day Notice to End Tenancy for Unpaid Rent stating the tenants failed to pay rent in the amount of \$1,150.00 with an effective vacancy date of July 12, 2015. The tenants submitted a copy of this Notice into evidence. The landlord also testified that for the months of August and September 2015 the tenants paid \$1,124.20 rent for each of these months.

The landlord submits that he had provided the 2014 Notice of Rent Increase to the tenants in late June 2014 not mid-July as described by the tenants. He states that after he served it to the tenants the female tenant called him and they discussed the Notice. He states that after he explained to the female tenant that he issued it in that amount because they had not imposed a rent increase since the start of the tenancy, she verbally agreed to the additional rent increase.

The landlord suggests that it was not until he issued a notice to end tenancy for cause regarding other issues that the tenants decided they should no longer pay the additional increase. The landlord acknowledged receipt of the tenants' payment of \$892.00 and the letter of explanation for the July 2015 rent.

Analysis

Section 43 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 for an additional rent increase; or agreed to by the tenant in writing.

Section 22 of the Residential Tenancy Regulation stipulates that the amount of rent increase a landlord may impose is no greater than the percentage amount calculated as “percentage amount = inflation rate + 2%. The section defines inflation rate as 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.

Additionally, the Residential Tenancy Branch posts the annual allowable rent increase on its website. The posting is made each September giving the allowable percentage rate increase for the upcoming calendar year. The following table lists the most recent allowable rate increases.

Year	Maximum Allowable Rent Increase
2015	2.5%
2014	2.2%
2013	3.8%
2012	4.3%
2011	2.3%
2010	3.2%
2009	3.7%
2008	3.7%
2007	4.0%
2006	4.0%

Residential Tenancy Policy Guideline #37 states, in part, a landlord who desires to increase a tenant's rent by more than the amount of the allowed annual rent increase can ask the tenant to agree to an increase that is greater than that allowed amount.

If the tenant agrees in writing to the proposed increase, the landlord is not required to apply to an arbitrator for approval of that rent increase. The landlord must still follow requirements regarding the timing and notice of rent increases.

The tenant's written agreement to a proposed rent increase must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars), and the tenant's agreement to that increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

In the case before me, I find that the landlord issued a Notice of Rent Increase in 2014 in an amount greater than the annual allowable amount that began October 1, 2014. As per the table above, the allowable rent increase for 2014 was 2.2%. I find the landlord increased the rent from \$1,100.00 to \$1,150.00 or 4.5%.

Despite the landlord's testimony that he received verbal agreement from the female tenant Section 43(1) of the *Act* requires that the agreement be in writing. As noted Policy Guideline #37 requires that the written agreement must clearly set out the agreed amount and the tenant's agreement.

As the landlord has provided no such written agreement I find that the undated Notice of Rent Increase issued that was effective beginning October 1, 2014 is invalid and not enforceable. As a result, I find that the ongoing rent from October 1, 2014 was \$1,100.00 and the tenants are entitled to recover all of the overpaid rent paid since October 2014.

I find the amount of overpaid rent from October 1, 2014 to the writing of this decision is \$50.00 per month for the period of October 1, 2014 to June 1, 2015 and \$24.20 per month for the period of July to September 2015 for a total overpayment of \$522.60.

Further, as the 2014 Notice of Rent Increase is invalidated, I also find that the Notice of Rent Increase issued on June 30, 2014 increasing the rent to \$1,178.75 is also invalid as it would be raising the rent from \$1,100.00 or 7.2%, while the allowable rent increase rate for 2015 is 2.5%. However, I note that this finding does not prevent the landlord from issuing a new Notice of Rent Increase at any time after this decision is received that would comply with all of the requirements of the *Act*.

Section 43(5) of the *Act* allows that if a landlord collects a rent increase that does not comply with the requirements outlined in the *Act* and regulation, the tenant may deduct the increase from rent or otherwise recover the increase.

As Section 43(5) provides authority for the tenant to withhold any overpayments resulting for an invalid rent increase and the tenants deducted \$232.20 of the total overpayment of \$522.60 I find that on the day that the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent (July 2, 2015) there was no rent owing to the landlord.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

As I have found that on July 2, 2015 there was no rent owed to the landlord I order that the 10 Day Notice to End Tenancy for Unpaid Rent is invalid and not enforceable. I also find that the tenants remain entitled to the return of the balance of the overpayment or \$290.40.

While the tenants have the right, as noted above, to deduct this amount from a future rent payment I am aware that the parties have another hearing scheduled to deal with different

Notice to End Tenancy and the potential exists for the tenancy to end before the next rental payment is made.

As such, I grant the tenants a monetary order in the amount of the balance of the overpayment. Should the tenancy continue and the tenants are responsible for the payment of rent going forward I order they may reduce that rental payment in satisfaction of the monetary order. If, and only if, the tenancy ends before the tenants are required to pay any more rent to the landlord the tenants may enforce this monetary order.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$340.40** comprised of \$290.40 rent overpayment and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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

