



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, LAT, LRE, MNDC, OLC, OPL, FF

Introduction:

The tenant seeks compensation from the landlord, alleging she received an illegal rent increase, and seeking reimbursement of the illegally collected rent; for the cost of a service charge for a cancelled flight to China; and for a loss of quiet enjoyment.

The tenant also applied to have a 2 Month Notice to End Tenancy cancelled, but at the hearing withdrew that portion of the claim. She seeks compensation equal to one month's rent that arises pursuant to that Notice.

The landlord has applied for an Order of Possession, pursuant to the 2 Month Notice.

Both parties participated in the hearing, and there are no issues as to service of the claims upon the opposing party, or as to the receipt of their respective evidence.

Issues to be decided:

1. Is the tenant entitled to a monetary order from the landlord for any or all of the claims made?
2. Is the landlord entitled to an order of possession?

Background and Evidence:

This tenancy began June 23, 2013. The tenant has exclusive use of a bedroom, and is one of 6 tenants residing in the home and sharing common areas. At the start of her tenancy the monthly rent was \$380.00. The former landlord was not the owner of the home, but resided in the premises. He provided wifi service to all the occupants, although there was no mention of such service being included in the written tenancy agreement.

The current landlord purchased the home on or about November 1, 2014. A new, fixed-term tenancy agreement was signed by the tenant on that date, providing for monthly rent of \$380.00, and confirming that a security deposit of \$190.00 was paid. The services of wifi or cable were not stated to be included in the rent. The agreement included a clause that if the tenant's child and mother stay for more than a month, the rent would increase to \$450.00 per month. The agreement also references that the rent would be increasing to \$410.00 February 1, 2015.

Both parties provided documentary evidence. The relevant tenant's testimony and evidence is summarized as follows:

1. She received a 2 Month Notice to End Tenancy, effective to end the tenancy October 31, 2015. She has started moving out, and will be fully vacated by October 31, 2015. She has paid all rent to date, including October's rent.
2. She received a rent increase effective February, 2015 of \$30.00 per month. The increase should not be considered to relate to wifi service. As the wifi was previously included, the current landlord must continue to provide wifi, and accordingly this entire charge is an illegal rent increase, which greatly exceeds the allowable rent increase. She should be reimbursed the sum of \$30.00 per month for 9 months.
3. She believes the landlord has wrongfully entered her bedroom, although she has no evidence of him having done so.
4. She believes the landlord wrongfully told the tenants that he had been fined for garbage overflow. She is aware that the landlord has received letters of complaint or warning from the city. When the landlord spoke to her about this, she felt threatened and that she was specifically targeted by the landlord for the problem with the overflowing garbage.

The relevant landlord's testimony and evidence is summarized as follows:

1. There is no evidence that the wifi was ever included in the original tenancy agreement, and no written tenancy agreement has ever been provided to him from the original landlord. He understands that the previous landlord subscribed personally for cable and wifi, and allowed the other occupants to share them without charge. When he left, these services were discontinued. The tenant agreed verbally with the new landlord to pay for shared wifi, as that would be cheaper than if she had to subscribe for that service on her own.
2. The landlord has never wrongfully entered the tenant's room, but he has entered the common areas of the house, as is his right.
3. Given the complaint by the City, the discussions regarding the overflowing garbage were necessary in this shared accommodation situation, and he spoke to all tenants about it, not just this tenant.
4. There is no basis upon which the landlord is liable for the tenant's changed flight costs. This was the tenant's own decision, and in any event, the tenancy agreement does not permit the tenant's child to reside in the premises.
5. The landlord agrees he owes a sum equal to one month's rent to the tenant (pursuant to the 2 Month Notice) and agrees that half the rent increase (\$15.00 per month for 9 months), was an illegal rent increase.
6. The landlord seeks an Order of Possession effective October 31, 2015.

Analysis:

I accept that the tenant was provided wifi at no charge from the original landlord. Given that he was not the owner of the home, I must assume that he was a head tenant, who in turn sublet a room and share accommodation to the tenant. When the former

landlord's tenancy ended, the tenancy of any sub-tenant would have ended concurrently (including the ending of the benefit of his wifi service).

As the former landlord's tenancy ended, the current landlord therefore properly required the tenant to sign a new tenancy agreement, which was made effective November 1, 2014. I note that the tenancy agreement did not state that wifi was included, but I also note that the agreement, as well as the landlord's Notice of Rent Increase of the same date, specifically referred to a rent increase of \$30.00 per month to \$410.00, with no mention that any portion of this increase related to the cost of wifi.

Section 43 of the Residential Tenancy Act governs the issue of rental increases. A landlord may impose a rent increase only up to the amount calculated in accordance with the regulations unless a higher amount was agreed to in writing by the tenant, or unless the landlord applies for and receives approval for a higher increase. In this case no written agreement to the rent increase was made by the tenant, and no approval for a higher than permitted increase was ever applied for by the landlord. I note that the tenancy agreement prepared by the current landlord specified that the rent was \$380.00, with no mention in that agreement that there would be an additional cost for wifi service.

These factors confirm that the entire \$30.00 monthly increase must be considered a rent increase. As this sum greatly exceeds the permitted increase, it constitutes an illegal rent increase, and the tenant must be refunded the sum of \$270.00 (\$30.00 x 9 months) by the landlord.

The tenant has not established that the landlord wrongfully entered the premises. The onus of proof in this regard lies with the tenant, and she can testify only as to a belief that that he has entered her unit wrongfully, testimony that is countered with opposing testimony by the landlord, which testimony is equally credible to the tenant's. The tenant has not proven this claim on a balance of probabilities.

The tenant has not proven that the landlord is liable for the cost of the cancellation of her flight to China. The tenancy agreement specifically indicated that the tenant's daughter could not reside in the premises (unless increased rent was paid). Further the tenant's concern over uncertainty as to a residence for her daughter is not attributable to an improper eviction, given that the tenant has elected to vacate pursuant to the Notice. No award for this portion of the tenant's claim is appropriate.

I accept that the garbage was indeed overflowing, and that the City provided complaint to the landlord about this. Whether or not a fine was levied, the landlord was within his rights to address any of the tenants about this issue. I find it unproven that the landlord's conduct in this regard amounted to a breach of the tenant's right to quiet enjoyment. No award to the tenant is appropriate.

In cases where a 2 Month Notice to End Tenancy has been given, section 51(1) of the Residential Tenancy Act entitles the tenant to compensation equal to one month's rent

from the landlord. Since all rents have been paid, this sum is payable by the landlord to the tenant. Given my ruling above as to the illegal rent increase, I find the landlord must pay the sum of \$380.00 to the tenant.

Section 49(9) provides that when a tenant does not apply to dispute the 2 month notice within 15 days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective day of the notice, and must vacate the rental unit by that date. In this case, the tenant in fact filed a dispute, but as she has now withdrawn it, I find that the tenant is conclusively presumed to have accepted that the ending of the tenancy. The landlord is entitled to an Order of Possession, effective October 31, 2015.

As both parties have been successful as to at least part of their claims, both are awarded recovery of their respective filing fees. In the result these awards offset each other.

Conclusion:

1. The landlord must pay the sums of \$270 and \$380.00 to the tenant, totalling \$650.00.
2. The landlord is issued an order of Possession, effective October 31, 2015.

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: October 23, 2015

Residential Tenancy Branch

