



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding (ACACIA GROVE) CASCADIA APT RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, FF

Introduction

This hearing was convened in response to the tenant's application under the *Residential Tenancy Act* (the Act) disputing an additional rent increase for the period November 2014 to October 2015 and to recover the claimed illegal rent increase and the filing fee.

Both parties participated in the hearing with their submissions and testimony during the hearing. The corporate landlord was represented by the resident manager for the residential property. The landlord acknowledged receiving the application and evidence of the tenant. The landlord did not advance document evidence in this matter. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Did the landlord impose a rent increase in contravention of the Act?
Is the tenant entitled to recover the monetary amount claimed?

Background and Evidence

The parties agree that from March 2013 to December 2013 the tenant resided on the landlord's property in #101, at a payable monthly rent of \$950.00 – situated near or adjacent to the current dispute rental unit of #208. The parties each testified, and effectively agreed, that in January 2014 the tenant began occupying the current rental unit of #208. The parties disagree as to the circumstances respecting the move to the current unit, but none the less, that it was by mutual agreement.

The parties agreed the tenant was not satisfied with conditions surrounding their original unit #101, for noise, smoke, commotion, and the amount for rent. The landlord testified they also felt some compassion for the tenant on learning of a traumatic episode in the

tenant's past, and sought to aid the tenant when they were able to offer them the current unit at a reduced rent of \$825.00, "for a few months or so", while the tenant pursued options for more affordable accommodations, namely BC Housing. The resident manager testified they personally satisfied the differential between the \$825.00 charged the tenant and the higher rent for which the unit was to be rented. The landlord testified that as the months advanced the tenant did not indicate they were planning on moving and came to accept the new unit and the lowered rent as permanent and not as the landlord had intended. The landlord testified that moving forward they determined to formalize the tenancy by way of a written tenancy agreement, which the parties executed on October 23, 2015, for an agreement start date of October 01, 2014 at a payable monthly rent of \$960.00.

The tenant testified the landlord told them in December 2013 they had a more suitable and more affordable place for them to move to, which was removed from #101 and on a higher floor – all with which the tenant agreed. The tenant claims it was entirely the landlord's plan, and not theirs, to seek subsidized accommodations. The tenant claims they were satisfied with the new unit and lower rent of \$825.00. They testified that 9 months later, in October 2014, the landlord "pressured" them and "forced" them to enter into a written agreement for the unit, which they claim they executed under duress, given their "medical condition". The tenant entered a letter from their doctor stating the tenant, *"has been suffering anxiety and post traumatic stress from an incident in his apartment when a gun went off in another apartment and came close to hitting (the tenant)"* – as written(anonymized).

The tenant testified they recently received a legal rent increase as of November 01, 2015 based on rent of \$960.00 in the written agreement; and, the tenant testified they accept their new rent of \$984.00 moving forward. However, the tenant disputes the rent of \$960.00 from October 2014 to October 2015. The tenant claims that under pressure and duress, and disadvantaged by their medical condition, the landlord "forced" them into signing the tenancy agreement, illegally raising their rent as of October 01, 2014 from \$825.00 to \$960.00. The tenant claims that although dissatisfied with the arrangement they paid the higher rent of \$960.00 for 9 months until reminded of their dissatisfaction upon receiving the recent rent increase of \$24.00.

The landlord testified they regret not formalizing the intended temporary arrangement at the outset of the tenant occupying #208. The landlord testified they feel their compassion for the tenant and aim to help them is being penalized for extending the tenant good will by lowering their rent for 9 months before having to enter into an agreement with the tenant for, a more satisfactory rental unit at effectively the same rent as the previous unit the tenant found objectionable. The landlord also argued it took the

tenant almost a year to raise objection about this matter and does not dispute the current rent going forward.

Analysis

On preponderance of all of the relevant evidence in this matter I find as follows.

I find that **Section 12** of the Act states (emphasis mine);

Tenancy agreements include the standard terms

12 The standard terms are terms of every tenancy agreement

(a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and

(b) **whether or not the tenancy agreement is in writing.**

I find the parties entered a verbal tenancy agreement in January 2014 for the tenant to occupy #208, and that a tenancy existed, and the agreement included the **standard terms** of all agreements as prescribed in the **Residential Tenancy Regulation – Schedule**. It must be noted that **Section 14** of the Act states that a tenancy agreement may not be amended to change or remove a **standard terms**.

I find that, unlike the standard terms of the tenancy, the parties' verbal agreement contained **agreed terms** including the date on which the tenancy started – January 2014 – what the tenancy included, and the amount of rent payable per month as \$825.00. **Section 14** states that a tenancy agreement may be amended to change or remove an **agreed term** if both parties agree to the change.

The foregoing is stated by the Act, in relevant part, as follows (emphasis mine):

Changes to tenancy agreement

14 (1) A tenancy agreement may not be amended to change or remove a **standard term**.

(2) A tenancy agreement may be amended to add, remove or change a **term, other than a standard term**, only if both the landlord and tenant agree to the amendment.

It must be noted that the **Residential Tenancy Regulation – Schedule** additionally states that changes or additions to the tenancy agreement, not contradicting a standard term, must be agreed to in writing and initialled by both the landlord and the tenant for it to be enforceable.

I find the parties agreed in writing to change the agreed terms of the verbal tenancy agreement when they entered into, and with their signatures and initials, executed the written tenancy agreement dated October 23, 2105 – in part agreeing to the payable rent thereafter as \$960.00. I find the above to be valid.

In respect to the tenant's argument they were pressured, or otherwise forced into agreeing to the change in the payable rent, I find that while I accept the tenant has challenges with anxiety and from post traumatic stress, as indicated by their doctor, I have not been provided sufficient evidence regarding their claims of coercion, or that the tenant entered into the written tenancy agreement contrary to their will or their conscience or were in a diminished mental capacity so as to render the agreement or conduct in this matter contrary to the Act or unconscionable.

As a result of all of the above, I find the tenant's claim the landlord imposed a rent increase contrary to the Act must fail. As a further result, the tenant's claim for compensation because of an illegal rent increase also fails. Therefore, I hereby **dismiss** the tenant's application in its entirety.

Conclusion

The tenant's application is **dismissed**.

This Decision is final and binding on both parties.

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: November 17, 2015

Residential Tenancy Branch

