



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI FF

Preliminary Issues

Upon review of the Tenant's application for dispute resolution the Tenant wrote the following, among other things, in the details of the dispute:

...[Tenant's name] chose to pay the illegal rent increase that night and avoid all contact with the Landlord. [Tenant's name] has now moved out and on and am looking for the return of her illegal rent increase plus the cost of this application.

[Reproduced as written excluding Tenant's name]

Based on the aforementioned I find the Tenant had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for the additional rent increase which they now dispute. Therefore, I amend the Tenant's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on September 9, 2015. The Tenant filed seeking to dispute an additional rent increase and obtain a Monetary Order for the return of that increase plus the cost of her filing fee from the Landlord.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord acknowledged receipt of the Tenant's application and Notice of hearing documents and argued that they were not served upon him in person or by registered mail; rather, he found them in his porch on his washing machine around September 24, 2015. Although the issue of service was raised the Landlord did not seek a remedy regarding that service. Rather, he appeared and presented arguments in response to the application. Therefore, I proceeded to issue a Decision regarding these matters.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Did the Landlord impose an illegal rent increase in breach of the *Act*?
2. If so, is the Tenant entitled to the return of any illegal increase paid?

Background and Evidence

The parties entered into a verbal tenancy agreement and the Tenant began occupying the rental unit sometime around February 1, 2015. Rent of \$650.00 was agreed to be pay on or before the first of each month. No security deposit was required to be paid.

The rental unit was described as being a self-contained suite located in the Landlord's home. The rental suite was on the same level as the Landlord's residence.

The Tenant submitted that when she went to pay her August rent on July 31, 2015 the Landlord told her rent was increased to \$750.00 and if she did not like it she could move out in one day. If she stayed, she said the Landlord told her that rent would be increased to \$850.00 effective August 1, 2015.

The Tenant testified that she could not move out in one day so she paid the additional \$100.00 rent for August and gave her notice to end her tenancy. She stated that she vacated the property as of September 1, 2015.

The Landlord testified that the Tenant had purchased a drum set during her tenancy. He said that he had asked her not to play those drums while he was home. The Landlord submitted that when the Tenant disregarded his order not to play the drums he decided he no longer wanted her living in his house. As a result he decided to continue to increase the rent until she moved out.

In closing the Landlord stated that he achieved what he wanted to with her moving out so he would agree to pay her the \$150.00 he was claiming. I then cautioned the Landlord to learn his rights and obligations as stipulated by the *Act*.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

The *Residential Tenancy Act* (the *Act*), sections 41, 42, and 43 stipulate how and when a landlord may increase the rent as listed below.

41 A landlord must not increase rent except in accordance with this Part.

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.

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.

The undisputed evidence in this case was the Landlord increased the August 2015 rent by \$100.00 in breach of sections 41, 42, and 43 of the *Act*. Accordingly, I grant the Tenant's application and award her monetary compensation in the amount of **\$100.00**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

I caution the Landlord that under section 95(2) of the Act, any person who coerces, threatens, intimidates or harasses a tenant from making an application under the Act, or for seeking or obtaining a remedy under the Act, may be found to have committed an offence and is subject to a fine or administrative penalty.

Conclusion

The Tenant was successful with her application and was awarded monetary compensation of \$150.00 (\$100.00 + \$50.00).

The Tenant has been issued a Monetary Order for **\$150.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with 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: January 04, 2016

Residential Tenancy Branch

