Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, FF

Introduction

The tenant applies to dispute an alleged wrongful rent increase and to recover overpayment of rent and, possibly, money due by law on the ending of a tenancy for "landlord use of property."

The landlord attended the hearing. The tenant did not attend the hearing nor request an adjournment. He was represented by his mother, Ms.---- They were both given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant has overpaid rent and is entitled to recover the overpayment back?

Background and Evidence

The rental unit is a two bedroom basement suite in a home that had been owned by the tenant's grandmother Ms. ----

The landlord purchased the home on September 1, 2015.

The tenant was residing in the basement suite at that time. He was paying his grandmother a monthly rent of $750.00. His representative, his mother Ms---- testifies that there was a written tenancy agreement in the hands of her mother's, the tenant's grandmother's property manager. It was not produced during this hearing.

The landlord says he was unaware of any landlord and tenant relationship with the tenant when he purchased the property. There was no account of any security deposit in the statement of adjustments for the purchase, thought the vendor, the grandmother Ms. ----- later sent him a cheque of $375.00 purporting to be the deposit money paid to her by the tenant.

Ms. -----. says that the respondent new landlord immediately wanted to increase the rent from $750.00 to $1300.00 and that increase was over the permitted increase amount set by the government.

The landlord refers to the vendor Ms. ----listing advertisement for the property. It indicated that potential rent from the basement suite is $1500.00 per month. He says he previously resided in the basement suite July to September 2014 and paid $1750.00. He then moved upstairs and rented it for $1850.00 per month until he purchased the entire home.

He says there was no “rent increase” as there was no formal rental agreement between the tenant and his grandmother and he was not notified of any such agreement. He knew the tenant was living downstairs but considered it a family arrangement, not a formal tenancy.

He says that no rent was demanded or paid on September 1.

Despite the foregoing, the landlord and the tenant entered into a new tenancy agreement signed by both on September 19, 2015.

That agreement says the tenancy started on September 1, 2015 on a month to month basis at a rent of $1300.00 per month, due on the first of each month. It acknowledges a security deposit of $375.00 and requires a further deposit of $275.00 for a total of $600.00.

Ms. ----says that her son could not read the contract, that he would “sign anything” and that he did not know the law when he signed it.

The landlord responds that he and the tenant texted messages between each other, showing that the tenant was literate and could make decisions on his own.

The tenant has vacated the property. Ms----- says he left October 23, 2015. The landlord says he first became aware that the tenant had left on October 26 or 27.

Ms. ---- points to an email dated October 7, 2015 from the landlord to the tenant entitled "Notice-Basement suite." The email says that the landlord had urgent need of the basement suite for a relative and that he'd "decided not to continue renting the property after November 3rd " and that he would drop "formal one month notice" letter through the door the next day.

There is no evidence that a formal notice was ever given to the tenant.

The previous owner and landlord Ms. ---- testifies that she never saw the formal tenancy agreement with her grandson either. She thinks the property management company must have it. She says she told the respondent landlord what her grandson was paying for rent and that the respondent landlord wanted more. She says she sent the security deposit money to the respondent landlord because he was the "new landlord." She was of the view that the $1500.00 rent figure for the basement suite put forth in her listing advertisement was only if two people lived in the basement suite.

Analysis

If the tenant did have a tenancy agreement with his grandmother then the respondent landlord would have been compelled to assume that tenancy.

It's my understanding of the law that if it were true that he had not been made aware of that tenancy by the vendor (Ms. ----.) the respondent landlord would have recourse against her but would have to honour the tenancy agreement with the applicant.

In such a case, the landlord would be restricted in the amount and frequency of any rent increase he wished to impose on the tenant.

However, in this case, the parties signed a new tenancy agreement.

It is apparent that the tenant was paying a low rent because his grandmother was the owner. It is not normal nor is it reasonable for a landlord to vary the rent of a rental unit so drastically based on the number of occupants.

When the respondent landlord purchased the property there was uncertainty about the rights and obligations of each of himself and the tenant.

It is apparent that they resolved this uncertainty by signing a new tenancy agreement at a rent agreed to by both.

The evidence does not demonstrate that the tenant was operating under a disability to the extent of preventing from understanding what he was signing.

The fact that the tenant might not have made himself aware of the rights and obligations imposed by law on landlords and tenants in British Columbia before he signed the tenancy agreement is not a defence to the validity or enforceability of that agreement.

I find that even considering the occurrences between the parties prior to September 19, they resolved their differences with the tenancy agreement.

The rent was increased from the $750.00 the tenant had been paying his grandmother, to $1300.00. The *RTA* prohibits a landlord from imposing a rent increase on a tenant over a certain small percentage or more than once every twelve month. It does not regulate any rent increase the parties agree to. The tenancy agreement show that the new rent was by agreement. It was not an imposed rent increase and so the rent increase restrictions have no application.

The tenant is not entitled to recover compensation for a wrongful rent increase.

Under s. 49 of the *RTA* a landlord may only end a tenancy for "landlord use of property" when he or a close family member intends in good faith to occupy it. Further, a landlord having that good faith intention may only end the tenancy by giving the tenant two clear rental periods of notice. Finally, s. 52 of the *RTA* says that a landlord must give notice to end the tenancy only in the "approved form."

The landlord's email of October 7 was not an "approved form" nor did it comply with all the other requirements of s. 52. It was an invalid notice to end the tenancy and not enforceable. The tenant could reasonably have ignored the October 7 email, awaiting the "formal one month notice letter" the landlord referred to.

Why the tenant left later in October is not clear from the evidence. The tenant did not testify or provide any written statement about his reasons.

Assuming that the tenant left because of a mistaken belief that the landlord's October 7 email would end his tenancy, he is in the same position as with the new tenancy agreement. He forewent investigation into his rights and the landlord's obligations when ending a tenancy. He cannot now rely on his lack of due diligence to change the decision he made.

The tenant's claim for relief is not clear. If it includes a claim for the equivalent of one months rent due under s. 51 of the *RTA* when a landlord gives a two month Notice to End Tenancy for "landlord use of property," his claim must fail. The landlord has not given that Notice.

Conclusion

The tenant's application must be dismissed.

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 19, 2016

Residential Tenancy Branch