



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL DRI RP ERP MNDC

Introduction

This hearing was convened in response to an application by the tenant under the *Residential Tenancy Act* (the Act) to cancel the landlord's 2 Month Notice to End for landlord's use (the Notice) dated February 29, 2016 with an effective date of April 30, 2016. The tenant further sought repair of their refrigerator. Unrelated to the primary application respecting the state of the tenancy the tenant sought to recover rent paid pursuant to an illegal rent increase imposed by the landlord.

Both parties attended the hearing. Each party submitted some document evidence. The parties were given opportunity to settle the entirety of the current dispute to no avail. None the less the parties did agree the tenancy will end one month later than the effective date of the Notice to End – on May 31, 2016. The tenant withdrew their claim respecting repairs to the refrigerator. As a result, the hearing proceeded solely on the merits of the tenant's monetary claim the landlord illegally raised the rent during the tenancy. The parties were permitted opportunity to present relevant evidence and make relevant submissions.

It must be noted the parties were recently before an Arbitrator in respect to cross applications pursuant to an unrelated Notice to End. The tenant provided a copy of the associated Decision made February 10, 2016 into evidence. It must further be noted the current hearing ended prematurely as the result of a building wide fire alarm in the location of the Arbitrator and the parties were advised the tenant's monetary claim would be adjourned to a later date.

Issue(s) to be Decided

Has the landlord imposed an illegal rent increase?

Is the tenant entitled to recover the monetary amount claimed?

Background and Evidence

The *relevant* evidence in this matter is as follows. The tenancy began May 01, 2012. At the outset of the tenancy the parties agreed the payable monthly rent would be \$700.00 payable in advance on the first day of each month. The parties additionally agreed the rent was reduced by \$100.00 from the advertised rent of \$800.00 in exchange for yard work by the tenant. The parties each submitted a copy of the tenancy agreement stipulating, “rent adjusted in return for yard work”. The tenant claims that 2 years ago the landlord raised the rent by \$50.00 to offset the landlord's utility costs; however, they also testified being independently responsible for their utilities usage. The tenant claims the landlord did not go about the rent increase, “by RTB rules” and that the \$50.00 increase exceeded 2.9%. The tenant further testified they initially abided by the agreement to do yard work but have not since the tenancy relationship became disputatious during 2015. The landlord testified they raised the rent April 2015 by half of the original reduction, because the tenant breached their agreement to provide yard maintenance and in turn the landlord had to secure the service of others to do the work for which the tenant was responsible. The parties generally disagreed with the other's version of events. However, the parties considered their overall dispute and each agreed the tenancy will end May 31, 2016 with an Order of Possession to the landlord effective on the agreed date.

Analysis

During the course of the hearing the parties turned minds to compromise and discussed the outlook of the tenancy and agreed to settle the term of the tenancy to their mutual satisfaction. The parties confirmed their agreement and that I record their settlement as per Section 63 of the Residential Tenancy Act, as follows:

1. the tenant and landlord agree that **this tenancy will end May 31, 2016**, and
2. the landlord will receive an **Order of Possession** effective **May 31, 2016**.

As a result, I grant the landlord an Order of Possession, **effective May 31, 2016**. The tenant must be served with this Order. If the landlord serves the Order of Possession on the tenant and the tenant fails to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

In respect to the tenant's residual claim the landlord imposed an illegal rent increase I have reflected on the evidence presented. Moreover, I accept the document evidence submitted by the tenant inclusive of the tenancy agreement and the February 2016 Decision of the Residential Tenancy Branch Arbitrator. I accept the parties' evidence

the tenant is responsible for yard work. I further accept the evidence of the Arbitrator's finding of February 10, 2016, stating:

The Parties agreed to raise the rent to \$750.00 sometime in the past two years and the Landlord states that this was because the Tenant failed to carry out required tasks under the original agreement on rent - Arbitrator Decision February 10, 2016

Although the hearing ended prematurely due to unforeseen circumstances, on reflection I find the presented evidence sufficient to conclude that the parties *agreed* as to the amount for rent currently being paid, that being \$750.00 per month. I find the increase of \$50.00 in the payable rent was by consent and not an illegal rent increase. As a result of all the above I find the tenant is not entitled to recover any rent paid.

Conclusion

The parties agreed to end the tenancy in accordance with their settlement. The landlord is given an Order of Possession in accordance with the settlement.

The tenant's application to recover paid rent for a claimed illegal rent increase 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: March 30, 2016

Residential Tenancy Branch