Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI CNR MNDC O FF

Preliminary Issues

Rule of Procedure 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenants' application I have determined that I will not deal with all the dispute issues the Tenants have placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy and the Notice of Rent Increase. Therefore, I will deal with the Tenants' requests to dispute the Notice of Rent Increase; to set aside, or cancel the Landlord's Notice to End Tenancy issued for unpaid rent; and recover their filing fee. I dismiss the balance of the Tenants' application with leave to re-apply.

Rule of Procedure 2.6 stipulates, in part, that an Application has been made when it has been submitted and the fee is paid or all documents for a fee waiver are submitted to the Residential Tenancy Branch directly or through a Service BC office.

Upon review of the Landlord's evidence submission the Landlord had included a copy of an Application for an Additional Rent Increase in his submission. The Landlord had not filed the Application for Additional Rent Increase properly with the RTB or at a Service BC office and did not pay the filing fee. Therefore, I find the Landlord had not completed the required steps to have filed an Application for Additional Rent Increase. Accordingly, I did not hear evidence pertaining to that application for Additional Rent Increase. The Landlord is at liberty to file that Application at the RTB or Service BC office in accordance with Rule of Procedure 2.6.

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on January 25, 2016 and amended on January 28, 2016. The Tenants filed to dispute a rent increase, to obtain an order to cancel a 10 Day Notice to end tenancy issued for unpaid rent; and to recover the cost of their filing fee from the Landlord.

The hearing was conducted via teleconference and was attended by the Landlord, both Tenants, and the Tenant's daughter/step daughter who attended the hearing as an

observer. The Landlord and each Tenant 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 female Tenant provided the majority of the evidence submission on behalf of both Tenants. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

The Tenants served the Residential Tenancy Branch (RTB) two packages of evidence as follows: December 17, 2015 the RTB received 33 pages of documentary evidence and 9 photographs; On February 9, 2016 the RTB received 13 pages of documentary evidence and 14 photographs. The Tenant affirmed they served the Landlord with copies of the same documents and photographs they had served the RTB. The Landlord acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Tenants' submissions as evidence for these proceedings.

On February 18, 2016 the Landlord submitted a volume of evidence to the RTB included in a duo-tang with labeled dividers. The Landlord affirmed that he did not serve the Tenants with copies of all of the same documents that he had served the RTB. Specifically the Landlord had not served the Tenants with dividers titled "Background" and "Dispute". The Landlord confirmed he did not serve the Tenants with copies of the 3 page typed document and the one photograph that were submitted behind the divider titled "Background". The Landlord stated the contents that were submitted to the RTB located behind the divider titled "Dispute" were served to the Tenants in their package of evidence at the front of their duo tang, excluding the divider. All of the remaining dividers and evidence documents were served upon the Tenants and the RTB in the same format.

A thorough review of the remaining contents of the Landlord's evidence was conducted with the Tenant who acknowledged receipt of those documents and/or photographs. The Tenant indicated that she was not aware of the service provisions for the respondent's evidence and after a brief discussion I was satisfied the evidence which was served upon the Tenants were served within the required timeframes.

Rule of Procedure 3.7 provides to ensure a fair, efficient and effective process, an identical package of documents and photographs, which are identified in the same manner and are placed in the same order, must be served on each respondent and submitted to the Residential Tenancy Branch directly or through a Service BC office.

Rule of Procedure 3.15 provides that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are in intended to be relied on at the

hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

To consider documentary evidence that was not served upon the other party would be a breach of the principles of natural justice. Therefore, as the first section of the Landlord's evidence was not served upon the Tenants in accordance with Rule of Procedure 3.7 or 3.15, I declined to consider that documentary evidence. I did however consider the Landlord's relevant evidence that was properly served upon the Tenants.

Both parties were provided with the opportunity to present relevant oral evidence, to ask 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. Should the Notice of Rent Increase issued December 20, 2015 be upheld or cancelled?
2. Should the 10 Day Notice issued January 20, 2016 be upheld or cancelled?

Background and Evidence

The Landlord and Tenants entered into a three year written fixed term tenancy agreement that began on April 1, 2015 and is scheduled to switch to either a month to month tenancy or another fixed term period after May 31, 2018. On March 15, 2015 the Tenants paid $750.00 as the security deposit.

As per the written tenancy agreement submitted into evidence, the Tenants are required to pay rent of $1,500.00 on or before the first of each month. The tenancy agreement lists the following as being included in the rent as section 3(b): water; electricity; heat; stove and oven; dishwasher; refrigerator; carpets; window coverings; laundry (free); storage; garbage collection; parking for 1 vehicle; and satellite TV receiver (1 TV only).

The copy of the tenancy agreement submitted into evidence by the Tenants was unsigned. The Landlord testified he had a copy of the tenancy agreement which was signed by both Tenants and himself. He stated he did not have a copy of that agreement with him during the hearing; however, he recalled the Tenants gave him a copy that they signed.

The Tenant testified and confirmed they both had signed a copy of the tenancy agreement which they gave to the Landlord. She said she did not realize their copy remained unsigned until it was brought up during this hearing.

The Landlord testified that after the Tenants had agreed to enter into a 3 year fixed term tenancy agreement he had agreed to drop the rent from the advertised amount of $1,600.00 to $1,500.00 per month to accommodate the Tenants' budget. The Landlord

asserted the agreement to reduce the rent was conditional based on a verbal agreement he had entered into with the male Tenant regarding the Tenants' electricity usage.

The Landlord argued the Tenants agreed the Landlord would monitor the Tenants' usage of electricity and if the Tenants used an unreasonable amount of electricity their rent would be raised back up to the original advertised amount of $1,600.00. The Landlord stated he had told the Tenants if their electricity usage was out of the ordinary he would increase the rent. Upon further clarification the Landlord said he rented the suite to previous tenants so he had a baseline of what normal electricity usage should be.

The Landlord asserted that when these Tenants' electricity usage went "above normal usage", the Landlord sent the Tenants a letter on November 21, 2015. Excerpts of that letter were submitted into evidence and stated the Tenants' rent would be increased to $1,600.00 effective December 1, 2015.

The Landlord testified that when the Tenants failed to pay the additional $100.00 for December 2015 and January 2016 rent he issued the Tenants an unsigned 10 Day Notice to end tenancy on January 20, 2016. He said he printed off the 10 Day Notice and simply forgot to sign the Notice before he posted it to the Tenants' door on January 20, 2016.

The Landlord testified that he had also served the Tenants with a Notice of Rent Increase on December 20, 2015 when he posted the Notice of Rent Increase document to the Tenants' door. He stated he listed the existing rent as being $1,600.00 based on his November 21, 2015 letter and his previous verbal agreement with the male Tenant that the rent would be increased back up to the advertised amount if the electricity usage was above normal usage. He argued the amount of the rent increase met the legislated allowable amount of 4.3 % for 2016.

The male Tenant testified and denied entering into a verbal agreement with the Landlord that rent would increase to $1,600.00 if their electricity usage was above normal amounts.

The female Tenant testified their rent has always been paid in full in the amount of $1,500.00. She denied there was a verbal agreement to raise their rent if their electricity usage was high. The Tenant argued the 10 Day Notice was invalid not only because their rent was paid but also because the Notice was not signed.

The Tenant asserted the Notice of Rent Increase was invalid because their current rent was not $1,600.00. She stated that although she was expecting a notice of rent increase after they had been there a year, she should not have to pay an increase amount that was calculated incorrectly.

In closing, the Landlord argued the written tenancy agreement was predicated on the monitoring of the Tenants' electricity usage because the agreement provided all utilities were included in the rent.

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 if all parties agree upon the terms of those agreements.

A written or verbal tenancy agreement, as with any contract, reflects the terms both parties agreed upon when the tenancy agreement or contract formed. The undisputed evidence before me was the Landlord and Tenants entered into a written 3 year fixed term tenancy agreement stipulating rent was $1,500.00 per month including all utilities. In addition, both parties confirmed the written tenancy agreement had been signed by the Tenants and given to the Landlord to sign.

Therefore, based on the above, I find the aforementioned undisputed terms of this tenancy agreement are recognized and enforceable under the *Residential Tenancy Act* (the *Act)*.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Section 41(1) of the *Act* stipulates that a landlord must not impose a rent increase for at least 12 months after whichever of the following applies: 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; if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

Section 41(3) of the *Act* provides that a notice of a rent increase must be in the approved form.

Section 5 of the *Act* states landlords and tenants may not avoid or contract out of this Act or the regulations; and any attempt to avoid or contract out of this Act or the regulations is of no effect.

As per the tenancy agreement, the Tenants' rent of $1,500.00 became effective as of April 1, 2015. Therefore, notwithstanding any alleged verbal agreement, the Landlord cannot unilaterally decide to increase the Tenant's rent to $1,600.00 effective December 1, 2015, as the rent had not been established for the minimum one year period. Furthermore, rent cannot be issued simply by issuing the Tenants a letter advising them their electricity usage is alleged to be "above normal limits". I find that type of rent increase to be in breach of sections 41(1), 41(3), and 5 of the *Act.*

Section 52 of the *Act* provides that in order to be effective, a notice to end a tenancy must be in writing and must:

> (a) be signed and dated by the landlord or tenant giving the notice,
>
> (b) give the address of the rental unit,
>
> (c) state the effective date of the notice,
>
> (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
>
> (e) when given by a landlord, be in the approved form.

Based on the above, I find the 10 Day Notice was invalid as it was not signed by the Landlord. In addition, there was insufficient evidence to prove the Tenants had failed to pay their rent. Rather, there was evidence the Tenants had paid their rent in the amount of $1,500.00 and the Landlord had attempted to impose an invalid rent increase. Accordingly, I uphold the Tenants' application and the 10 Day Notice to end tenancy issued January 20, 2016 is cancelled and is of no force or effect.

Section 43(1) of the *Act* provides a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations; ordered by the director on an application under subsection; or agreed to by the tenant in writing.

Upon review of the Notice of Rent Increase, and in consideration of the Tenants' submissions and my aforementioned findings, I further find the Landlord completed the Notice of Rent Increase incorrectly by listing the Tenants' current rent as being $1,600.00 when in fact it was $1,500.00. Therefore, I find the Notice of Rent Increase to be invalid as it lists an increased rent amount that is greater than the legislated allowable amount for 2016 of 2.9%. Accordingly, I uphold the Tenants' application and cancel the Notice of Rent Increase that was issued December 20, 2015.

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 Tenants have succeeded with their application; therefore, I award recovery of the **$100.00** filing fee, pursuant to section 72(1) of the Act.

The Tenants may deduct the one time award of $100.00 from their next rent payment as full recovery of their filing fee. If rent is paid in a format that prevents the Tenants from deducting the filing fee from their rent, the Tenants have been issued a Monetary Order for $100.00 which may be enforced through Small Claims Court after service upon the Landlord.

Conclusion

The Tenants were successful with their application and were awarded recovery of their filing fee. The 10 Day Notice issued January 20, 2016 and the Notice of Rent Increase issued December 20, 2015 were both cancelled.

This decision is final, legally binding, and 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 10, 2016

Residential Tenancy Branch