Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, DRI, FF

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss; to dispute a rent increase; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on May 30, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents.

The Tenants submitted 10 pages of evidence to the Residential Tenancy Branch with the Application for Dispute Resolution. The Tenant stated that this evidence was mailed to the Landlord with the Application for Dispute Resolution. The Agent for the Landlord stated that she did not receive those pages of evidence from the Landlord, who is her father. The Agent for the Landlord stated that her father is elderly; his memory is failing; and he does not recall if he received the evidence.

The parties were advised that there was insufficient evidence to conclude that the Landlord received the 10 pages of evidence submitted by the Tenants and that it would not be accepted as evidence. The parties were advised that the hearing would proceed and that it would be adjourned if, during the hearing, it became necessary for me to view the evidence submitted by the Tenants. Shortly after the hearing commenced it became apparent that the Tenants' evidence was highly relevant to the issues in dispute and the hearing was adjourned for the purpose of re-serving the Tenants' evidence package.

Although I accept that the Tenants served their evidence to the Landlord in accordance with section 88 of the *Act* and the Tenant opposed the adjournment, I concluded that an adjournment was appropriate in these circumstances. As the Landlord cannot recall receiving the Tenants' evidence and it was not available to the Agent for the Landlord at these proceedings I find that it would be unfair to the Landlord, given his failing memory,

to proceed with the hearing without providing his agent an opportunity to view the evidence.

In determining that an adjournment was appropriate in these circumstances I was heavily influenced by the fact that these proceedings related to a rent increase that was imposed in 1990. I therefore find that a delay of another six weeks will not unduly disadvantage either party.

On November 14, 2016 the Landlord submitted one page of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this document was served to the Tenants, via registered mail, on November 10, 2016. The Tenant acknowledged receipt of this document and it was accepted as evidence for these proceedings.

On November 16, 2016 the Tenants submitted one page of evidence to the Residential Tenancy Branch. The Tenant stated that this document was not served to the Landlord. As the document was not served to the Landlord it was not accepted as evidence for these proceedings.

At the hearing and in my interim decision of November 23, 2016 the Tenant(s) were directed to serve the Landlord with the 10 pages of evidence previously submitted to the Residential Tenancy Branch, via registered mail.

At the reconvened hearing the Tenant stated that this evidence was re-served to the Agent for the Landlord on November 25, 2016. The Agent for the Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The hearing was reconvened on January 17, 2017 and was concluded on that date.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Are the Tenants entitled to recover rent increases that do not comply with the *Residential Tenancy Act (Act*)?

Background and Evidence

The Tenant stated that they moved into the rental unit sometime in 1988. The Agent for the Landlord stated that her father does not recall when the tenancy began but she agrees that it has been in place for many years. The parties agree that there is no written tenancy agreement and that the Tenants are still living in the rental unit.

The Tenant stated that sometime in November of 2009 the Landlord gave them a Notice to End Tenancy in which the Landlord informed the Tenants that he intended to move

back into the rental unit. The Agent for the Landlord stated that the Landlord's memory is declining and he does not recall serving the Tenants with a Notice to End Tenancy in 2009.

The Tenant stated that sometime after serving the Tenants with a Notice to End Tenancy the Landlord told them that he would move into a different rental unit if the Tenants would agree to increase their rent from $1,640.00 to $1,900.00. She stated that the parties verbally agreed to increase the rent to $1,900.00 and they did not record that agreement in writing.

At the hearing on November 22, 2016 the Agent for the Landlord stated that the Landlord's memory is declining and he does not recall why the rent was increased from $1,640.00 to $1,900.00.

At the hearing on January 17, 2016 the Agent for the Landlord stated that the Landlord did not serve the Tenants with a Notice to End Tenancy in 2009; that the Tenants knew the Landlord wished to move into their rental unit; and that the Tenants offered to increase the rent to $1,900.00 so that the Landlord would not move into the unit.

The Agent for the Landlord and the Tenant agreed that prior to February 01, 2010 the Tenants were paying rent of $1,640.00 and that the Tenants started paying rent of $1,900.00 on February 01, 2010.

The Agent for the Landlord and the Tenant agreed that rent was increased from $1,900.00 to $1,960.00 on January 01, 2012 and that the Tenants began paying the increase on January 01, 2012.

The Tenants submitted the second page of a Notice of Rent Increase, which indicates that the Landlord was increasing the rent from $1,900.00 to $1,960.00, effective January 01, 2012.

The Tenant stated that the rent was increased again on May 01, 2014 and that the Tenants began paying the increased rent of $2,050.00 on May 01, 2014.

The Tenants submitted the second page of a Notice of Rent Increase, which indicates that the Landlord was increasing the rent from $1,960.00 to $2,050.00, effective May 01, 2014.

The Agent for the Landlord stated that she does not have access to record books that show how much rent the Tenants were paying on May 01, 2014 and she does not know how much rent the Tenants paid for that month. She acknowledged that the Tenants are currently paying rent of $2,050.00, but she does not know when they began paying this amount of rent.

The Agent for the Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution proceeding in February of 2016, at which time it was determined that the Landlord was not, at that time, entitled to increase the rent from $2,050.00.

The Tenant stated that the Tenants have paid all of the rent increases imposed and that there is no rent currently outstanding. The Agent for the Landlord does not dispute this testimony.

The Tenant stated that the Tenants did not realize they might be entitled to recover these rent increases until another occupant of the residential complex was awarded compensation for rent increases.

Analysis

I find that rent was increased from $1,640.00 to $1,900.00 on February 01, 2010. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Tenants were paying $1,640.00 in rent prior to February of 2010 and they began paying $1,900.00 in rent on February 01, 2010. I find that this evidence strongly corroborates the Tenant's testimony that rent was increased on February 01, 2010.

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is calculated in accordance with the regulations.

Section 22(2) of the Residential Tenancy Regulation stipulates that a landlord may impose a rent increase that is no greater than two percent above the annual inflation rate. In 2010 the allowable rent increase was 3.2%. As the rent increase that was imposed in 2010 was significantly greater than 3.2%, I find that the Landlord did not have authority to increase the rent to $1,900.00 on February 01, 2010, pursuant to section 43(1)(a).

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that has been ordered by the director on an application under section 43(3) of the *Act*. As I have no evidence that the Landlord made an application to increase the rent to $1,900.00, pursuant to section 43(3) of the *Act*, I find that the Landlord did not have authority to increase the rent to $1,900.00 on February 01, 2010, pursuant to section 43(1)(b).

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is agreed to by the tenant in writing. As I have no evidence that the Tenants agreed to the proposed rent increase, in writing, I find that the Landlord did not have authority to increase the rent to $1,900.00 on February 01, 2010, pursuant to section 43(1)(c). In reaching this conclusion I was heavily influenced by the fact that the Tenant testified there was no written agreement to increase the rent; the Landlord does not recall if there was a written agreement to increase the rent; and that no written agreement was submitted by either party.

I find that the rent increase that was imposed on February 01, 2010 was not valid as it did not comply with the legislation. I therefore find that the rent for this rental unit should have remained at $1,640.00 until it was increased in accordance with the legislation.

On the basis of the undisputed evidence I find that rent was increased from $1,900.00 to $1,960.00 on January 01, 2012 and that this rent increase was based on a Notice of Rent Increase that was served to the Tenants. As the rent had not been lawfully increased from $1,640.00 to $1,900.00 in 2010, I find that any rent increase after 2010 had to be based on rent of $1,640.00. I therefore find that the rent increase in 2012 actually increased the rent from $1,640.00 to $1,960.00.

In 2012 the allowable rent increase was 4.3%. As the rent increase that was imposed in 2012 was significantly greater than 4.3%, I find that the Landlord did not have authority to increase the rent to $1,960.00 on January 01, 2012, pursuant to section 43(1)(a).

As there is no evidence that the Tenants agreed, in writing, that the rent could be increased to $1,960.00 and there is no evidence the Landlord had authority from the Residential Tenancy Branch to increase the rent to $1,960.00, I find that the Landlord did not have authority to increase the rent to $1,960.00 on January 01, 2012, pursuant to sections 43(1)(b) or 43(1)(c) of the *Act*.

I find that rent was increased from $1,960.00 to $2,050 on May 01, 2014. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Tenants are currently paying rent of $2,050.00 and by the second page of the Notice of Rent Increase, which indicates that this rent increase was effective on May 01, 2014.

As the rent had not been lawfully increased from $1,640.00 to $1,900.00 in 2010, I find that any rent increase after 2010 had to be based on rent of $1,640.00. I therefore find that the rent increase in 2014 actually increased the rent from $1,640.00 to $2,050.00.

In 2014 the allowable rent increase was 2.2%. As the rent increase that was imposed in 2014 was significantly greater than 2.2%, I find that the Landlord did not have authority to increase the rent to $2,050.00 on May 01, 2014, pursuant to section 43(1)(a).

As there is no evidence that the Tenants agreed, in writing, that the rent could be increased to $2,050.00 and there is no evidence the Landlord had authority from the Residential Tenancy Branch to increase the rent to $2,050.00, I find that the Landlord did not have authority to increase the rent to $2,050.00 on May 01, 2014, pursuant to sections 43(1)(b) or 43(1)(c) of the *Act*.

Section 43(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with the legislation, the tenant may deduct the increase from rent or otherwise recover the increase.

Given that the rent has not been increased to more than $1,640.00 in a manner that complies with the legislation, I find that the Tenants were only obligated to pay monthly

rent of $1,640.00 for the period between February 01, 2010 and January 31, 2017, which is $137,760.00. ($1,640.00 x 84 months).

My calculations show that:

- the Tenants paid $43,700.00 in rent for the period between February 01, 2010 and December 31, 2011 (23 months x $1,900.00);
- the Tenants paid $54,880.00 in rent for the period between January 01, 2012 and April 31, 2014 (28 months x $1,960.00);
- the Tenants paid $67,650.00 in rent for the period between May 01, 2014 and January 31, 2017 (33 months x $2,050.00) and
- the Tenants paid a total of $166,230.00 in rent for the period between February 01, 2010 and January 31, 2017.

On the basis of these calculations, I find that the Landlord has collected rent increases that did not comply with the legislation, in the amount of $28,470.00. ($166,230.00 - $137,760.00) I therefore find that the Tenants are entitled to a rent refund of more than $25,000.00, pursuant to section 43(5) of the *Act*. As the Tenants have applied for a monetary Order of $25,000.00, I find that they are entitled to the full amount of their claim.

In adjudicating this claim I have placed no weight on the Tenant's submission that the Landlord served the Tenants with a notice to end tenancy in 2009, as that issue is not relevant to the issue of these rent increases. The most relevant issue is that the agreement to increase the rent was not made in writing. Regardless of whether the Tenants agreed to pay the rent of $1,900.00 because they were served with a notice to end tenancy, as the Tenants claim, or because they simply knew the Landlord wanted to live in the rental unit, as the Landlord claims, is largely irrelevant.

I find that the Tenants' Application for Dispute Resolution has merit. I am unable to grant the Tenants' application to recover the cost of filing this Application for Dispute Resolution, however, as I do not have authority to award more than $25,000.00.

Conclusion

The Tenants have established a monetary claim, in the amount of $25,000.00, which represents a refund of rent increases they have paid which do not comply with the legislation. I therefore grant the Tenants a monetary Order for $25,000.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Tenants do not wish to file this monetary Order with the Province of British Columbia Small Claims Court they have the right, pursuant to section 72(2)(a) of the *Act* to deduct all, or part of this amount from any rent due to the Landlord.

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 17, 2017

Residential Tenancy Branch