



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR OLC FF

This hearing dealt with the tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 4, 2017 (the "10 Day Notice"), for an order directing the landlord to comply with the *Act*, and to recover the cost of the filing fee.

The tenants and the landlord attended the teleconference hearing. The parties provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The landlord confirmed that he did not serve any documentary evidence on the tenants and did not receive the tenants' documentary evidence. The landlord also confirmed that he had the opportunity to review the tenants' documentary evidence prior to the hearing. I have only considered the evidence that was served in accordance with the Rules of Procedure.

Preliminary and Procedural Matters

At the outset of the hearing, the parties were advised that interruptions would not be tolerated during the hearing yet the landlord continued to interrupt the undersigned throughout the hearing. As a result, the landlord was eventually formally cautioned to cease interrupting the undersigned or be muted for the remainder of the hearing.

Issue to be Decided

- Should the 10 Day Notice be cancelled?

Background and Evidence

The landlord confirmed that the tenancy agreement was not in writing which I will deal with later in this decision. A copy of the 10 Day Notice was submitted in evidence. The tenants received the 10 Day Notice dated April 4, 2017 on April 4, 2017 and disputed it on April 7, 2017 which is within the five day timeline provided under section 46 of the *Act*.

The amount listed as owing on the 10 Day Notice was \$210.00 and was broken down into increments as follows:

“Jan \$40
Feb \$95
Mar \$40
Apr \$40”

[Reproduced as written]

Firstly, I note that the amounts do not total \$210.00, as claimed by the landlord, they total \$215.00. Secondly, the landlord was asked how he provided the “informal” rent increase he described during the hearing to the tenants to which he affirmed was via text message. The landlord was advised that a rent increase via text message is not enforceable under the *Act* and is not in compliance with section 42 of the *Act*.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice issued by landlord – Section 42 of the *Act* applies and states:

Timing and notice of rent increases

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.

[My emphasis added]

Given the above, as the landlord failed to use the Notice of Rent Increase form which is the approved form under the *Act*, I find the landlord breached section 42 of the *Act* by attempting to give the tenants a rent increase via text message which is not enforceable under the *Act*. Therefore, I **cancel** the 10 Day Notice dated April 4, 2017 and find that it is of no force or effect.

I caution the landlord to comply with section 13(1) of the *Act* in the future by ensuring that all future tenancy agreements are in writing as required by the *Act*.

I caution the landlord to comply with section 42 of the *Act* in the future if considering a rent increase under the *Act*. The landlord can find the approved forms at the following website:

<http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/forms>

As the tenants' application had merit, I grant the tenants the recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. **I authorize** the tenants a one-time rent reduction in the amount of **\$100.00** from June 2017 rent in full satisfaction of the recovery of the cost of the filing fee.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The tenants' application is successful.

The 10 Day Notice dated April 4, 2017 issued by the landlord is cancelled and is of no force or effect.

The tenants have been granted a one-time rent reduction in the amount of \$100.00 from June 2017 rent in full satisfaction of the recovery of the cost of the filing fee.

The landlord has been cautioned to comply with section 13(1) and 42 of the *Act* in the future.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: May 16, 2017

Residential Tenancy Branch