



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC, FF
Tenants: DRI, MNDC, OLC, CNC

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and the tenants sought seeking to dispute a rent increase; a monetary order and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord; his agent and one of the male tenants.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to dispute and cancel a rent increase; to a monetary order for an overpayment of rent; and to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 43, 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the landlord is entitled to an order of possession for cause and to a monetary order to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Act*.

Background and Evidence

The tenants submitted the tenancy began in 2011 with rent in the amount of \$750.00 monthly but that in July 2016 they advised the landlord that their grandson was moving into the rental unit. The parties signed a new tenancy agreement on August 9, 2016 listing the two original tenants and the grandson as tenants for a month to month tenancy beginning August 1, 2016 for a monthly rent of \$825.00 due on the 1st of each month with a security deposit of \$375.00 already paid.

The tenants submit that the landlord did not provide 3 months' notice of the rent increase and that the rent increase of \$75.00 exceeded the annual rent increase allowed under the *Act* by \$53.25 per month. The tenants seek return of this monthly overage for 11 months (August 2016 to June 2017 inclusive). I note the parties agreed that the tenants have paid only \$771.75 for the month of June 2017 as of the date of the

hearing but the tenant advised he would pay the balance to \$825.00 pending the outcome of this hearing.

Both parties submitted a copy of a 1 Month Notice to End Tenancy for Cause issued on April 30, 2017 with an effective vacancy date of June 1, 2017 citing the tenants had been repeatedly paying rent late. However, the landlords submitted that because the tenants have paid almost the full amount of rent for June 2017 they expect the tenancy to end on June 30, 2017.

The landlord submitted the tenants have failed to pay rent on the day that it was due any month during 2017. In support of this position the landlord has submitted several rent receipts dated: September 2, 2016; February 1, 2017; February 25, 2017; March 2, 2017; March 30, 2017; April 4, 2017; and May 1, 2017 (balance of April 2017).

The tenant submitted that they have not received rent receipts for the months of January or February 2017. While the tenant was unsure of what day rent was paid in January he said it would have likely been January 2, 2017 or the first banking day of January. He also doubts the authenticity of the February receipts. He does acknowledge that part of rent for February was paid February 1, 2017 and the balance was paid within 15 days of that first payment.

Analysis

Section 43 of the *Act* stipulates that 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 for an additional rent increase; or agreed to by the tenant in writing.

As the tenants have signed a new tenancy agreement on August 9, 2016 agreeing that rent would be in the amount of \$825.00 I find that, in fact, the tenants have signed agreeing to the new rent amount and the terms of the tenancy agreement are changed to that effect. As a result, I find the rent increase to \$825.00 was agreed to by the tenants in writing and as such the rent increase complies with the requirements set forth in Section 43.

Therefore, I dismiss the tenant's claim to change to reduce the rent amount to \$771.75 and their claim to be reimbursed for any overpayment as they have not established any overpayment has been made.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. The guideline goes on to say that it does not matter whether the late payments are consecutive, however if the late payments are far apart an arbitrator may determine that the tenant cannot be said to be repeatedly late.

From the testimony of both parties I find there is no dispute that the tenants were late paying rent for the months of March and April 2017. Despite the tenant's testimony that they have not received rent receipts for the months of January and February 2017 I find the tenant has confirmed that both full rental payments for those months was not completed by the 1st of each month.

As such, I find that there are at least 4 occasions that the tenants have been late paying rent. As result, I find the landlord has established sufficient grounds, pursuant to Policy Guideline #38 and Section 47 of the *Act* to end the tenancy.

While the effective of the Notice to End Tenancy stipulated June 1, 2017 as the effective date, I concur with the landlord that the effective date should be changed to June 30, 2017 as the landlord has received nearly all the payment for June, 2017.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety without leave to reapply.

I find the landlord is entitled to an order of possession effective **June 30, 2017 after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant the landlord a monetary order in the amount of **\$100.00** comprised of the fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: June 05, 2017

Residential Tenancy Branch