



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

DRI, OLC

Introduction

This was a hearing with respect to an application by the tenant made April 20, 2017 under the *Residential Tenancy Act* (the Act). The hearing was originally scheduled to be heard by conference call on May 24, 2017. At the conference call hearing the Arbitrator adjourned the hearing because the tenant, whose hearing is impaired so as to require amplification, was unable to communicate by telephone. The Arbitrator directed that the hearing proceed as an in-person hearing at the office of the Residential Tenancy Branch in Burnaby set for June 28, 2017 at 9:00 A.M.

Both parties attended this hearing and were given opportunity to present all *relevant* evidence and *relevant* affirmed testimony in respect to the tenant's claim and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. Both parties acknowledged receiving the evidence of the other. The parties were further provided opportunity to mutually resolve their dispute to no avail. Neither party presented witnesses nor requested an adjournment or a summons to testify. The hearing proceeded on the merits of the tenant's application.

Issue(s) to be Decided

Has the tenant established the landlord has imposed an illegal rent increase?

Should the landlord be ordered to comply with the *Residential Tenancy Act*, Regulation or tenancy agreement?

Background and Evidence

The *relevant* evidence in this matter is as follows. The written agreement for the tenancy states it began on August 01, 2016 for a fixed term ending July 31, 2017. The monthly rent is \$1,215.00. The tenant paid a security deposit of \$600.00 at the start of the tenancy.

It must be known that following a 15 year tenancy the parties came before an Arbitrator in 2015 and the Decision recorded the parties' settlement agreement with an Order of Possession in favor of the landlord and agreement the tenant held a right to return to the rental unit after renovations, as well as other ancillary conditions. After 17 months the parties again came together to enter into a new agreement for the tenant to return to the unit August 01, 2016. The parties agreed the prevailing tenancy agreement reflected [condition e.] of the parties' settlement agreement of 2015 in respect to the *payable rent* for the unit upon the tenant moving back following the renovations. Specifically, the parties' settlement agreement respecting the payable rent states as follows,

e. The landlord has the right to increase the rent by no more than \$100.00 per month when the tenant moves back and is thereafter governed by section 43 of the Act for any further rent increases – *as written*.

The parties agreed the prevailing tenancy agreement indicates that at the end of the fixed-term the tenant must move out of the rental unit.

It must be known that contrary to convention the parties presented that there are 2 original tenancy agreements in this matter. Both parties confirmed their respective original signatures to 2 tenancy agreements and addendums entered into on June 29, 2016. Both contracts for the tenancy are similar but effectively reflect the same terms.

However, the tenant claims the landlord somehow altered the 2 tenancy agreements and placed the tenant's initials on their version of the agreement before giving it to them and on the landlord's version: both indicating the tenant must vacate at the end of the fixed term by their initials on page 2 of the agreement. The tenant had previously submitted their version of the agreement into evidence and displayed the original at the hearing.

In April 2017 the landlord provided the tenant with a written offer to enter into a new agreement at the end of the current fixed term period for an additional fixed term of one year and reflecting an increase to the payable rent from the current amount of \$1215 to \$1850.00. The tenant determined the offer did not comply with the parties' settlement agreement of 2015 and determined to dispute the landlord's prospective increase. The tenant argued that after moving back to the unit, going forward the landlord would be governed by Section 43 of the Act respecting any further payable rent increases. But moreover, the tenant further argued they entered into the fixed term tenancy agreement against their will and against their interest under duress and "pressure" by the landlord and then the landlord somehow altered the agreement(s). The tenant testified they came to discover their initials had been placed in the 'tenant's initial box', but claims they are not their own. As a result the tenant argued the agreement should be considered unconscionable.

The landlord effectively provided they complied with the settlement agreement of 2015 in respect to the payable rent of the agreement, making the payable rent \$100.00 above the previous payable rent. The landlord argued that the Residential Tenancy Branch standard tenancy agreement is not in itself unconscionable. And, that neither the Act nor the parties settlement agreement prevents the landlord from entering into a fixed term agreement and does not thereafter prevent the parties from negotiating a new agreement including new payment of rent terms. The landlord testified they did not pressure the tenant at the outset of the agreement and the tenant seemed satisfied to be returning. The landlord testified they simply went over the agreement with the tenant confirming their agreement by their initials within and at the bottom of every page of the

agreement. The landlord argued the tenant did not protest the agreement when they signed it or following, and has only disputed all matters 10 months later after receiving the landlord's renewal offer of April 2017. The landlord agreed that they and their agent KL brought 2 tenancy agreement documents and respective addenda so as to leave the tenant a copy. The landlord testified their agent of the day, KL, primarily dealt with the tenant; however they ultimately went over the agreement with the tenant and that both understood all terms of the agreement.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

I heard the evidence of the parties and reviewed documentary evidence filed to the application. Despite the abundance of other evidence, of relevance and at issue in this proceeding is the tenant's application for relief to dispute a prospective rent increase on the ground that the increase does not comply with the parties settlement agreement of 2015 or with the rent increase provisions of the *Residential Tenancy Act* and Regulation, and therefore for the landlord to comply with the Act. The balance of other issues advanced in the hearing, while related and of concern to the tenant are irrelevant until or unless the landlord seeks to rely on their interpretation of the tenancy agreement or enforce the contested provision in the tenancy agreement. At which time the tenant's issues respecting the agreement(s) may be appropriately decided. As a result I make no findings in this regard.

Section 43 of the *Residential Tenancy Act* provides that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, or as Ordered by the Director upon an application by the landlord, or agreed to by the tenant in writing. In this matter I find the landlord viewed the tenancy as coming to an end and in preparation informed and offered the tenant a possible next step, which to the tenant's dismay includes rent payments exceeding 50% of the current payable rent. However, in this matter I find the landlord has only proposed, and not imposed, a rent

increase contrary to what is prescribed in statute. As a result I find that the tenant's application in this regard is premature as it has not been established the landlord has contravened the Act or Regulations or tenancy agreement by imposing an illegal rent increase and there is currently no remedy available to the tenant's request on application. I find that at this time it is not necessary to Order the landlord comply with the Act and decline to do so. While I appreciate the spectre of this proceeding has likely clouded the tenancy relationship it remains available to the parties to constructively mutually determine the course of this tenancy moving forward.

As a result of all the above, **I dismiss** the tenant's application in its entirety.

Conclusion

The tenant's application has been dismissed.

This Decision is final and binding.

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: July 04, 2017

Residential Tenancy Branch