



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated June 9, 2017
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on June 9, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on June 13, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated June 9, 2017?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began in February 2002. The tenant testified he paid a security deposit of \$600 at that time. He was not sure of the amount of the rent.

On March 30, 2016 the rent was raised from \$1275 per month to \$1500 per month. On March 30, 2017 the rent was raised from \$1500 per month to \$1800 per month. The

landlord did not give a Notice of Rent Increase in the approved form. The tenant submits this is an illegal rent increases that resulted in an overpayment of \$3125 for 14 months and an overpayment of \$300 for 2 months. He submits he is entitled to apply this overpayment of \$3750 plus the \$100 filing fee for a total of \$3875 to the rent for June, July, and August 2017 ($\$1275 \times 3 = \3825).

The landlord does not dispute the rent was \$1275 in March 2016 and the increases alleged by Tenant have been made. However, he testified he approached the tenant and he came back to him suggesting the increase to \$1500 and to \$1800. Further, the rents were significantly under the market rent at the time. Had the tenants not agreed to this he would have taken the appropriate steps to have a rent increase.

The tenant responded saying he had no choice to agree to this. He was taking care of two elderly disabled women at the time and they had no place to go. He has since found them alternative accommodation.

Law:

Section 40 to 43 of the Residential Tenancy Act provides as follows:

Part 3 — What Rent Increases Are Allowed

Meaning of "rent increase"

40 In this Part, "**rent increase**" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

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.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Rent is defined in the definition section of the Act as follows:

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

Analysis:

I determine the tenant has a right to apply the amount paid in excess of \$1275 per month to future rent as he has done for the following reasons:

- I determined the increases from \$1275 to \$1500 and from \$1500 to \$1800 are rent as defined by the Residential Tenancy Act. They were paid with the rent and do not involve a payment for anything other than the right to possess the rental unit and for services or facilities.
- The Act provides that a landlord can increase the rent in three ways.
 - Firstly, by giving a Notice of Rent Increase in the approved form. The landlord is limited to the amount prescribed by regulations with this option.

The landlord did not use the approved form and the amount of the increase exceeds what is permitted by regulations.

- Secondly, the landlord can apply for a rent increase under section 43(1)(b). An arbitrator can make an order for a rent increase in excess of what is permitted by Regulations. .
- An increase that was agreed to by the Tenant in writing. The landlord failed to get the Tenant's agreement in writing.

I determined the rent paid in excess of \$1275 amounted to \$3750 which is not permitted by the Act. The Tenant is entitled to apply this to future rent.

Determination and Orders:

As a result I ordered that the 10 day Notice to End Tenancy dated June 9, 2017 be cancelled as there was not rent outstanding at the time. I determined the Tenant had the right to apply the overpayment of \$3750 plus the \$100 filing fee in this application to the rent for June, July and August 2017.

Order for Possession:

At the hearing the parties mutually agreed to end the tenancy on August 31, 2017 should the tenant be successful with this application. As a result I issued an Order of Possession effective August 31, 2017.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: August 04, 2017

Residential Tenancy Branch