



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ☐ (other)

Introduction

This hearing was convened in response to an application by the tenant dated July 24, 2017 pursuant to the *Residential Tenancy Act* (the Act) in respect to a dispute coded 'other', which I accept as per the details of the application as disputing an additional rent increase and seeking its recovery.

Both parties attended the hearing and were given opportunity to mutually resolve their dispute to no avail. The parties were given opportunity to each submit evidence prior to the hearing and provide testimony. Both parties acknowledged the exchange of all evidence as was received by this proceeding. The hearing advanced on the merits of the tenant's application. The parties respectively acknowledged understanding that the tenant sought to recover paid increase of rent in the amount of \$600.00, and the landlord sought to retain same.

Issue(s) to be Decided

Has the landlord imposed an *additional* rent increase?

Is the tenant entitled to recover a paid increase of rent?

Evidence and background

The undisputed relevant evidence in this matter is as follows. The tenancy started January 01, 2016. The parties each provided the tenancy ended September 30, 2017 pursuant to a written mutual agreement to end the tenancy. Both parties submitted a copy of the written tenancy agreement entered into in November 2015 between the

tenant and the landlord's agent. The payable monthly rent under the agreement was \$1100.00 subsequently increased to \$1132.00 following a permitted rent increase on January 01, 2017. It is undisputed that at the outset of the tenancy the parties agreed in writing via the tenancy agreement that the monthly rent would increase \$300.00 for each additional tenant or occupant not named in the agreement. The parties highlighted in testimony term/clause 6 of the agreement, **Rent and Fees**, in respect to the above, which states in relevant part,

" . . the tenant agrees that for each additional tenant or occupant not named in clause 1 or 2 above, the rent will increase by \$300.00 per month, effective from the date of his occupancy. The acceptance by the landlord of any additional occupant does not otherwise change this agreement or create a new tenancy".

In July 2017 the landlord informed the tenant their determination to *enforce* the tenancy agreement clause respecting *additional occupants* upon earlier learning of a third occupant in the rental unit, which the tenant provided is their 16 month old son, born to the tenant couple 3 months after the tenancy start date in March 2016. The landlord submitted a signed statement from their agent stating they learned of a third person living at the rental unit in April 2016 and that at the outset of the tenancy application there was no mention a third person was expected in the tenancy. The tenant submitted the landlord's July 2017 written demand for \$300.00 additional rent to start August 2017, in which the landlord further states they were not seeking back rent for the new tenant amounting to \$4500.00, "*. . due solely to my neglect of this section of our Tenancy Agreement*" – as written. The tenant paid the additional rent of \$300.00 for August and September 2017 before vacating the unit. The tenant provided the 2 cancelled cheques for these months as proof of the payments. The landlord disputes the tenant's entitlement to their return.

The tenant argued that the additional rent given the landlord was paid under protest for the last 2 months of occupancy and the landlord's imposition of the *additional occupant* term of the agreement was an unfair or unconscionable enforcement of the term. The tenant testified that from birth their infant cannot live elsewhere or on their own, but is

unquestionably linked to reside with their parent(s), therefore the circumstances are not alike to someone moving into the tenancy. The tenant testified that the *additional occupant* clause of the tenancy agreement ought not to apply to a child born to their parents. The landlord testified the Act respecting additional rent for *additional occupants* is not prejudicial. The landlord argued the Act and tenancy agreement does not differentiate in respect to the *additional occupant* and they were therefore within their right to invoke the clause of the agreement *for an additional occupant*.

Analysis

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

Section 13 of the Act, **Requirements for tenancy agreement**, states that a written tenancy agreement must include amongst all prescribed requirements for an agreement set out in Section 13, the amount of periodic rent payable, and, that if the rent payable varies with the number of occupants, the amount by which it varies. This is prescribed in **Section 13(2)(f)(iv)** of the Act as follows. (**emphasis added**)

Requirements for tenancy agreements

13 (2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(f) the agreed terms in respect of the following:

- (i) the date on which the tenancy starts;
- (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
- (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;

(iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;

Section 40 of the Act states,

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*].

I find that Section 40 of the Act clearly states the additional \$300.00 at issue in this matter is not an *additional* "rent increase" as asserted by the tenant. I find that at the outset of the tenancy the parties agreed the rent would increase by \$300.00 for each *additional occupant* to the tenancy. I find the landlord then learned that the number of occupants had increased and 15 months later ultimately sought reliance on the agreement respecting *additional occupants* to pursue the increase in monthly rent. I find the tenant reluctantly paid an additional \$300.00 per month approaching the agreed end to the tenancy whilst pursuing its recovery.

I find that while I may assign merit to portions of the parties' respective arguments on the conscionability of the increase in rent, whether I prefer one argument over the other is moot.

Rather, moreover in this matter I find that, as submitted, the landlord knew in April 2016 of a third person living in the rental unit, however acknowledging they neglected to seek compliance with the *additional occupant* clause for 15 months following. As a result I find that by this conduct the landlord effectively *waived* reliance on and right of this clause.

The legal doctrine of waiver is the surrender or voluntary relinquishment of a known right or privilege by conduct inferring that a particular right has been relinquished.

Therefore, as concluding result, I find it appropriate that the tenant is entitled to recover the added increase of rent paid in the sum of **\$600.00**.

Conclusion

The tenant's application is granted.

I grant the tenant a **Monetary Order** under Section 67 of the Act for the amount of **\$600.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

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: October 25, 2017

Residential Tenancy Branch