



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, FF

Introduction

This hearing was convened in response to the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for a monetary order. The tenant's application seeks to recover historical rent increases in the amount of \$22,800.00 collected by the landlord that the tenant claims have not complied with the Act; and, to recover the filing fee associated with the application.

The tenant and landlord attended the hearing. The parties were provided opportunity to mutually resolve their dispute no avail. The parties were provided opportunity to make prior submissions of evidence. I have accepted all relevant evidence provided to this matter and as acknowledged exchanged by the parties. The parties were given opportunity to provide testimony and present evidence. Prior to concluding the hearing both parties acknowledged presenting all the relevant evidence they wished to present.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy ended April 30, 2017. The relevant *undisputed* evidence in this matter is as follows. The parties agreed that in 2002 they met and established a verbal tenancy agreement in which the landlord would accept a reduced rent for the landlord's rental

unit (a house adjacent to the landlord's house) for which the tenant would pay the landlord \$500.00 as the outset payable monthly rent of the tenancy starting May 2002. The parties respectively were unable to recall additional terms to the verbal contract, other than a security deposit was waived by the landlord due to the tenant's financial situation of the day. The tenant testified that under their verbal contract the rental accommodation was affordable. Mindful of the series of discrepancies within the tenant's document evidence, after aptly confirming with both parties it their agreed testimony that the originally agreed monthly rent of \$500.00 was satisfied by the tenant for the following 6 years to June 2008. Further, the

parties' agreed testimony is that after 6 years the landlord and the tenant met, at their shared fence, and they verbally agreed to a \$100.00 rent increase starting July 2008, establishing the rent at \$600.00 as the payable rent moving forward.

The parties further agreed the tenant satisfied the monthly rent of \$600.00 to December 2010. The parties respectively testified that after an additional 2.5 years the landlord and the tenant met and again they verbally agreed the rent would increase \$100.00 to \$700.00 beginning the following month of January 2011.

The parties agreed the tenant satisfied the monthly rent of \$700.00 for the full 12 months to December 2011. At which time, the landlord informed the tenant in writing on December 29, 2011 that the rent was increasing an additional \$100.00 and effectively imposed a new payable rent of \$800.00 per month to be effective 3 days later on January 01, 2012. The landlord provided a copy of their letter in this respect.

The parties agreed the tenant satisfied the newly imposed rent of \$800.00 from January 2012 to March 2017, after which the tenant did not owe rent before subsequently vacating (2 month Notice to End for Landlord's Use).

The tenant argued that the increases throughout the span of the tenancy were imposed without their required approval in contrast with the Act; and, that in the 15 year span of the tenancy the 3 rent increases which raised the rent from \$500.00 to \$800.00 became onerous. The landlord argued that the rent increases were fair *vis a vis* where the rent should be in respect to advancing market conditions of the area and their costs. The landlord acknowledged their choice to originally agreeing and accepting rent from the outset which could have been set higher but on which they compromised to accommodate the tenant's circumstances. The landlord argued that if they had increased the rent annually pursuant to Regulation the tenant would have paid approximately \$3600.00 more in the payable rent than what they actually paid over the span of the 15 year tenancy.

Analysis

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

On preponderance of the relevant evidence I find as follows.

The relevant law

Part 3 of the Act addresses **What Rent Increases Are Allowed**.

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.

Therefore, Section 43(1) of the Act states in part that a landlord may increase the rent up to the amount calculated in accordance with the regulations, or agreed to by the tenant in writing. The historical rent increases in this matter did not correspond to the allowable rates set for 2008(3.7%), 2011(2.3%) or for 2012(4.3%). The Act further states that a landlord may request an amount that is greater than the allowable amount by making an application for dispute resolution which the landlord did not, and in that context the landlord did not comply with the Act. Therefore, in this matter, my decision is that a previously applied increase in the rent is recoverable by the tenant, as follows.

In this matter I find I have not been presented with evidence of damage and loss resulting from the historical rent increases over the 15 year tenancy relationship. Moreover I have not been presented with evidence that the rent increases were imposed onto the tenant in contempt of their consideration or despite their protest, dispute or contestation by the tenant in the absence of consent. Rather, I accept the parties' agreed evidence in the hearing and find that from the very outset of the tenancy their practice respecting all requirements of and for a tenancy, and in particular this tenancy, were never put onto

paper, beginning with the tenancy agreement. All contractual matters thereafter were also dealt with verbally, if also casually, at their shared fence, and again not in writing. As a result, in this matter I accept the parties evidence that in their particular approach toward agreements after 6 years of rent at \$500.00 the tenant and landlord effectively verbally contracted the rent would become \$600.00, and that after 8.5 years they again verbally contracted that the payable rent would increase an additional \$100.00 and become \$700.00. As a result, I find the tenant is not entitled to recover the mutually contracted increases in rent from May 2002 to December 2011.

I find that after December 2011 the final increase in rent of \$100.00 paid from January 2012 to the end of the tenancy was imposed by the landlord without any manner of contracting, agreement, consent or other legal basis. As a result, I find the tenant is entitled to recover this increase in the aggregate of **\$6300.00** (January 2012 to March 2017 = 63 months x \$100.00).

As the tenant was successful in their application they are further entitled to recover their filing fee of \$100.00 for an established award in the sum of **\$6400.00**. Therefore,

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$6400.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is granted in the above terms.

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: December 04, 2017

Residential Tenancy Branch