



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: FFT, MNDCT, DRI

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$6410
- b. An order disputing a rent increase that is above the amount allowed by law.
- c. An order to recover the cost of the filing fee.

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

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on December 21, 2017. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to an order disputing a rent increase that is above the amount allowed by law.
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The rental property has two commercial rentals on the bottom floor and two residential units including the unit rented by the tenant on the top floor.

The tenant testified she entered into a tenancy agreement with the previous owner of the rental property. She produced a written tenancy agreement that provided that it was for a one year fixed term starting on March 1, 2017 and ending on February 28, 2018 and becoming month to month after that if the parties were unable to agree to another fixed term. The rent was \$900 per month payable in advance on the first day of each

month. The tenant paid a security deposit of \$450 on February 1, 2017. The tenant testified she refused to sign that tenancy agreement.

In the summer the rental property was sold to a third party. In October 2017 the third party presented a form of tenancy agreement to the tenant that purported to increase the rent to \$1200 per month payable in advance and provided for a fixed term commencing February 1, 2018 and ending June 30, 2018 at which time the Tenant would have to vacate.

She testified she talked to an information officer at the Residential Tenancy Branch. She refused to sign the tenancy agreement that had been presented by the new owners.

At the end of October the tenant had an opportunity to rent a place on Salt Spring Island and decided to do so. She was familiar with the rental unit. She paid rent for both places for November as she thought this would provide for the orderly transition to her new rental unit on Salt Spring. As it turned out she decided that the Salt Spring rental would not work out and she gave notice to the owner of that unit that she would be vacating it at the end of November 2017.

The tenant testified that heat was included with the rent of the subject rental unit. A review of the written rental agreement presented by the previous owner indicates heat was not included. The operator of an antique store downstairs paid for the heat. However, they determined they were not prepared to continue to pay for heat after they had left for the day and this resulted in a significant loss of heat for the tenant. The tenant talked to them and worked out an arrangement with them that she would leave an expensive piece of furniture (a Duncan Phyfe mahogany dining table) with them which would be sold on consignment and the proceeds from that sale could be used to pay additional heating costs. The owners of the antique business then started to leave the heat on after they left for the day.

In late October or early November the landlord took possession of the antique store including the inventory as the operators of the antique store stopped paying the rent. The landlord removed the belongings from the antique store (including the tenant's expensive table) to took it to the dump.

The tenant testified she experienced significant problems with excessive heat over the Christmas time. She asked the landlord to reduce the heat after Christmas and the landlord responded and reduced the heat.

The tenant vacated the rental unit on January 1, 2018.

Analysis:

Section 7 of the Act states as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline #16 includes the following:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Analysis:

There is an issue as to whether the tenant has properly identified the landlord. The form of tenancy agreement presented by the new owners identified a numbered company as the landlord. The tenant testified she paid rent to that number company. However, the tenant did not identify the numbered company as the landlord in this

application. She testified the numbered company is was part of the group of companies of the respondent. I determined it was not necessary to make a determination on this issue as for the reasons set out below I determined the tenant failed to prove her claim on the merits.

With respect to each of the tenant's claims I find as follows:

- a. I dismissed the tenant's claim of \$100 for plant damage caused by insufficient heat. The tenant failed to prove heat was included with the rent. The conduct of the tenant in making an arrangement with the operators of the antique store downstairs suggest the landlord was not responsible. Further, even if the landlord's were responsible the tenant failed to advice the landlord in a timely way. At Christmas time (after the antique store operators had vacated) when she advised the landlord there was excessive the landlord responded appropriately and turned the heat down.
- b. I dismissed the tenant's claim for damage to her Duncan Phyfe dining table for the following reasons. The Application for Dispute Resolution alleged it was worth \$4000. However, the monetary order worksheet indicates the tenant was claiming \$200. I determined this is not a residential tenancy matter. The tenant had made an arrangement with the operators of antique store that they could sell the table on consignment. The table was placed in the antique store. While it was subsequently removed by the landlord and destroyed this action does not relate to the tenancy between the landlord and the tenant. The landlord was unaware the table belonged to the tenant at the time it was removed and there is insufficient evidence to indicate that the landlord should have been aware it belonged to the tenant. The table was in removed from the rental unit. As a result I dismissed this claim.
- c. I dismissed the tenant's claim in the sum of \$44.50, \$266.10 and \$185.75 for travel costs to Salt Spring. I agree with the submission of the tenant that the landlord did not have the legal right to change the tenancy agreement and raise the rent from \$900 per month to \$1200 per month. There was no basis for the landlord to end the tenancy despite what the landlord was saying. The tenant obtained information from the Residential Tenancy Branch to this effect in October. The tenant's decision to rent the unit in Salt Spring was a choice made by the tenant and was not brought about because of the landlord ending the tenancy. The landlord is not responsible to pay these costs.
- d. I dismissed the tenant's claim \$2000 for loss of income. She is an artist and she testified she was not able to work during the season leading to the

- Christmas season because of the disruption in her tenancy. The tenant failed to produce sufficient financial evidence to prove this claim. Further she failed to prove the landlord prevented her from working during this period. The landlord operated on the basis the tenant had a fixed term to February 2018 as evidence by the form of extension the landlord had presented to the tenant. The landlord did not serve any Notices to end the tenancy. The tenant failed to prove this claim and as a result it is dismissed.
- e. I dismissed the tenant's claim of an illegal rent increase. While the landlord's demand that she pay an increase from \$900 to \$1200 is not permitted by law, the tenant did not pay that demand and she vacated the rental unit prior to when it was to take place.

Conclusion:

In conclusion I dismissed the tenant's claim including the claim for the cost of the filing fee without leave to re-apply.

This decision is final and binding on the parties.

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: February 13, 2018

Residential Tenancy Branch