



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mountain Peaks Resort ULC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, DRI, MNDC, FF

Introduction:

This was an application by the tenant to cancel a Notice to End the Tenancy for non-payment of rent dated March 23, 2018 with an effective date of April 2, 2018, an order cancelling a rent increase not permitted by the Act, and a monetary Order for the recovery of the increase in rent amounting to \$ 2,125.00. Both parties were represented at the hearing.

Preliminary Matter:

In the course of this proceeding it was determined that the tenant had not provided her possession copies of the tenancy agreements dated October 1, 2016 and October 1, 2017 and therefore permitted me to rely on those in addition to the Notice to End the Tenancy. I have excluded all of the remaining documents uploaded by the tenant.

Issues:

Is the tenant entitled to a cancellation of the Notice to End the Tenancy and a Monetary Order?

Is the landlord entitled to an Order for Possession?

Background and Evidence:

The landlord's agent PH admitted service of the tenant's application. The tenant admitted receiving the Notice to End the Tenancy on March 23, 2018.

The tenant testified that he entered into a series of 12 month fixed term tenancies beginning on September 14, 2012. Each agreement required the tenant to move out at the end of the individual tenancies. The last two agreements were relevant to the matters before me. On October 1, 2016 the parties entered into a 12 month fixed term tenancy agreement ending on September 30, 2017 with rent in the amount of \$ 1,525.00. On October 1, 2017 the parties entered into a 12 month fixed term tenancy agreement ending on September 30, 2018 with rent in the amount of \$ 1,988.63. The tenant was required to move out at the end of each of these agreements. The tenant submits that, although he agreed to and signed all of the agreements, the amount of rent in the 2017 (current) tenancy agreement amounts to an increase contrary to any amount prescribed by the Regulations (4 %) and therefore constitutes an illegal rent increase. Accordingly the tenant paid only \$ 1,525.00 for his rent in March 2018 and none in April 2018. He submits the rent ought to be reversed to \$ 1,525.00 and to recover the sum of \$ 2,125.00 representing the difference between the "old rent" of the 2016 agreement and the current rent in the new 2017 agreement. The tenant also seeks an Order cancelling the Notice to End the Tenancy.

The landlord's agent PH submits that each of the 2016 and 2017 agreements constitute separate and new agreements and as the 2017 agreement followed the previous one the landlord was permitted to request any rent it was able to negotiate and not bound by the amount prescribed by the Act or Regulations. PH testified that the rent for April is outstanding and that \$ 425.00 is outstanding for March 2018. The landlord seeks an Order for Possession.

Analysis:

The Residential Tenancy Act was amended on December 11, 2017 prohibiting fixed term tenancies which required tenants to move out at the end of the term and converting all such fixed tenancies into month to month terms at the end of each term. Accordingly the current 2017 tenancy agreement will be converted into a month to month tenancy on September 30, 2018 when it ends. However this will not affect the rights and obligations of the parties with respect to the amount and payment of rent under the current agreement.

Section 43 of the Act governs the amount of rent increases.

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.

I find that the tenancy agreement entered into by the parties on October 1, 2017 constituted an increase in rent which the tenant agreed to in writing in accordance with section 43 (1) (c). Accordingly I find the rent stipulated therein amounting to \$ 1,988.63 was not an increase contrary to the Act or Regulations. I have dismissed the tenant's application to dispute the rent increase and his application to recover the amount of \$ 2,125.00 representing any increase not permitted by law.

The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Here the tenant admitted not paying rent for April and making a partial payment for March 2018 but had not obtained an Order for the RTB permitting him to do so. He has made an application to reduce his rent however I have dismissed same in aforementioned paragraph. I find, therefore the tenant did not have a lawful reason for withholding his rent. Accordingly I must dismiss his application to cancel the Notice to End the Tenancy. I have upheld the Notice to End the Tenancy.

Section 55(1)(b) provides that the arbitrator must grant an order of possession of the rental unit where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. I order pursuant to section 44 of the Act that the tenancy shall end two days after the Order for Possession is served on the tenant.

Conclusion:

I have dismissed the tenant's applications to cancel a rent increase, recover sums paid contrary to a rent increase and to cancel the Notice to End the Tenancy dated March 23, 2018. The tenant will not recover any filing fee paid. I granted the landlord an Order for Possession effective two days after service upon the tenant. 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 and all Orders must be served on the tenant as soon as possible.

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: April 23, 2018

Residential Tenancy Branch