



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "Act") for:

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties were present service of documents was confirmed. The parties each testified that they were in receipt of all of the other's materials. Based on the testimony of the parties I find that they were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the landlord be authorized to increase the rent as submitted? Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The parties agree on the following facts. This tenant has been residing in the rental unit for a number of years. The tenant rents the Manufactured Home owned by the landlord

and pays monthly rent as well as the pad rent. The current rent is \$322.00 with a pad rent of \$231.55 for a total amount paid of \$553.55

There was a hearing regarding this tenancy before the Provincial Court of British Columbia. A Final Order was issued dated December 15, 2017. The Order reads in part:

[The tenant] is now a tenant of [The landlords], and is renting the Manufactured Home from them, and is responsible for monthly rent in the amount of \$322 commencing January 1, 2018, in addition to the current monthly pad rent.

The landlord issued a Notice of Rent Increase on February 1, 2018 indicating that the monthly rent would increase from \$553.55 to \$575.69 on June 1, 2018. The landlord submits that the last rent increase was issued in August, 2016 and therefore it has been more than 12 months since the previous increase. The tenant submits that the rent was set by the order of the Court and established on January 1, 2018.

Analysis

Section 42(1) of the Act provides that:

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.

The parties disagree on the date that the current rent was established and when the last rent increase occurred. The tenant relies on the Final Order and submits that the rent was established by that Order. The landlord testified that the previous rent increase occurred in August, 2016 and therefore it has been more than 12 months since the previous increase.

Based on the evidence submitted and the ordinary reading of the Final Order I find that the tenant's interpretation to be more persuasive. The Order provides that "rent in the amount of \$322 commencing January 1, 2018". I find that the verb "commencing" established the rent as starting on that date. I find that the current rent was first established and set on that date. Therefore, the landlord may not, under the Act, issue

a rent increase for at least 12 months after the establishment of the rent in the Final Order. As I find that the rent increase dated February 1, 2018 was issued within the 12 month period I find that it is of no force or effect.

As the tenant's application was successful the tenant is entitled to recover the filing fee for this application. While the tenant testified that the landlord has failed to pay in satisfaction of other monetary orders issued at previous hearings I find that there is insufficient evidence of these arrears and decline to make a finding.

Conclusion

The rent increase dated February 1, 2018 is cancelled and of no force or effect. This tenancy continues with a total rent of \$553.55 until changed in accordance with the *Act*.

The tenant is entitled to recover the filing fee of \$100.00 for this application. The tenant may deduct that amount from a monthly rent payment in satisfaction of this monetary award.

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 16, 2018

Residential Tenancy Branch