



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”) seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) and disputing the rent increase upon which the 10 Day Notice was based.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), the witness for the Landlord (the “Witness”) and the Tenant, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision will be mailed to her at the rental unit. At the request of the Agent, copies of the decision will be e-mail to the Landlord at the e-mail address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I confirmed the full legal names of the Landlord and the parties present in the hearing. As a result, I discovered that the name listed for the Landlord on the Application is not the full legal name for the Landlord. With the consent of both parties I amended the Application to show the correct legal name for the Landlord.

Preliminary Matter #2

Although the Agent had the Witness present with him at the start of the hearing, the Witness was asked to leave the room while the testimony and evidence of the parties was presented. The Agent subsequently chose not to call the Witness to provide any evidence or testimony for my consideration.

Issue(s) to be Decided

Is the Tenant entitled to an order dismissing the rent increase sought by the Landlord?

Is the Tenant entitled to cancellation of the 10 Day Notice?

If the Tenant is unsuccessful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties agreed that the month-to-month tenancy began approximately 14 years ago at a monthly rent amount of \$500.00, that rent is due on the first day of each month, and that a security deposit in the amount of \$250.00 was paid, which the Landlord still holds.

The Landlord stated that the Tenant's rent had not been increased in many years, if ever, and that he needed to bring the rent amount paid by the Tenant more in line with the current market rent. As a result, the Landlord stated that he and the Tenant mutually agreed to a \$200.00 per month rent increase in writing. The parties agreed that a Notice of Rent Increase was subsequently received by the Tenant, on or about November 28, 2017, increasing her rent amount from \$500.00 to \$700.00 effective March 1, 2018. In support of this testimony the parties provided me with copies of the written agreement and the Notice of Rent Increase.

The Landlord stated that when the Tenant did not pay the full \$700.00 in rent as required on March 1, 2018, he personally served the Tenant with a 10 Day Notice on March 3, 2018. The 10 Day Notice in the documentary evidence before me, dated March 3, 2018, has a vacancy date of March 31, 2018, and states that as of March 1, 2018, the Tenant owed \$700.00 in rent.

The Tenant acknowledged personally receiving the 10 Day Notice on March 3, 2018, but disputed that the \$700.00 listed on the 10 Day Notice was or is owed. The Tenant stated that after signing the agreement to pay the \$200.00 per month rent increase, she learned that the regulation currently only allows for a 4% rent increase. As a result, the Tenant only paid the \$500.00 in rent originally owed under her tenancy agreement, plus a 4% increase in the amount of \$20.00 on March 1, 2018. The Landlord acknowledged receipt of the \$520.00 but testified that the Tenant still owes the remaining \$180.00 and therefore the 10 Day Notice is valid.

Analysis

Sections 41 of the *Act* states that a Landlord must not increase rent except in accordance with this Part. Section 42 and 43 of the *Act* outline how and when a landlord may increase a tenant's rent as follows:

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 payable for the rental unit;

(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.

Both parties agreed that the Tenants rent had not been increased in 14 years and that a Notice of Rent Increase in the approved form was served on the Tenant at least three months before the effective date of the increase. As a result, I find that the rent increase complies with section 42 of the *Act*. Section 43(1) of the *Act* states that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, or as ordered by the director on an application under subsection (3), or as agreed to by the tenant in writing. Although the Tenant argued that the \$200.00 rent increase is invalid as she was unaware of her rights at the time she signed the written agreement and the \$200.00 increase is significantly greater than the 4% rent increase currently calculated under the regulation, there is no dispute that the Tenant did in fact agree to the \$200.00 rent increase in writing. As a result, I find that the \$200.00 rent increase complies with section 43 of the *Act* and that the Landlord was therefore entitled to increase the monthly rent by \$200.00 effective March 1, 2018.

Further to this, section 43(2) of the *Act* states that a tenant is not entitled to make an application to dispute a rent increase that complies with this part of the *Act*. As a result, I find that the Tenant was not entitled to dispute the rent increase and I dismiss her Application seeking to dispute a rent increase without leave to reapply.

Having made this finding, I will now turn my mind to the 10 Day Notice. Section 46(1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and I find that the Tenant was personally served with the 10 Day Notice on March 3, 2018. I also find that the Tenant was obligated to pay the full \$700.00 in rent, on time and in full.

Although the parties agreed that the Tenant paid \$520.00 in rent on March 1, 2018, there is no evidence before me that she paid the remaining \$180.00 within the five (5) days granted under section 46(4) of the *Act*. As a result, I find that the 10 Day Notice is valid and enforceable and I dismiss the Tenant's Application seeking cancellation of the 10 Day Notice without leave to reapply.

As the Tenant's Application seeking cancellation of the 10 Day Notice is dismissed, I find that I must grant the Landlord an Order of Possession under section 55 of the *Act* if the 10 Day Notice complies with section 52 of the *Act*. As the 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date of the Notice and the grounds for ending the tenancy, and is in the approved form, I find that it complies with section 52 of the *Act*. Based on the above, and pursuant to section 55 of the *Act*, the Landlord is therefore entitled to an Order of Possession. As the effective date of the 10 Day Notice has passed and the Tenant has paid some of the rent owed for May, 2018, the Landlord consented to an Order of Possession date of May 31, 2018.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 P.M. on May 31, 2018, after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: May 23, 2018

Residential Tenancy Branch