



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC DRI FF

Introduction

This hearing was convened in response to applications by the tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a Monetary Order pursuant to section 67 of the *Act*;
- a dispute of the rent increase pursuant to section 43 of the *Act*; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The tenant W.B., her counsel, C.G. and the landlord attended the hearing. All parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenants’ application for dispute along with their evidentiary package. I find the landlord was duly served in accordance with the *Act*.

Issue(s) to be Decided

Can the tenants dispute a rental increase?

Are the tenants entitled to a monetary award?

Can the tenants recover the filing fee?

Background and Evidence

Tenant W.B. (the “tenant”) explained the tenants began occupying the rental unit on February 1, 2012 and vacated on August 31, 2018. Rent was \$2,400.00 per month at the conclusion of the tenancy, and deposits of \$1,100.00 (security) and \$550.00 (pet) paid at the outset of the tenancy continue to be held by the landlord.

The tenant said the tenancy was a series of fixed-term tenancy agreements with the first fixed-term tenancy agreement running from February 1, 2012 to January 31, 2014. Rent for this agreement was \$2,200.00 per month. A second fixed-term agreement was signed by the parties on January 2, 2017. This was a month to month rental agreement which ran until July 31, 2016 with rent of \$2,250.00 per month. A final tenancy agreement was then entered into the parties. This tenancy ran from August 1, 2017 to August 31, 2018 with rent of \$2,400.00 per month.

The tenants are seeking a monetary award of \$2,596.46 in satisfaction for a return of alleged rent overpayments. The tenant argued she paid rent which was increased above the amount permissible under legislation. The tenants also sought a return of utilities paid in 2016. The tenant explained utilities were paid in 2016 contrary to the terms of the tenancy agreement signed by the parties. Specifically, the tenants are seeking a return of \$1,800.00 in alleged overpayment of rent from August 2017 to August 2018 representing \$150.00 per month, along with the water component of the utility bill in the amount of \$796.46.

The tenant argued the landlord had pressured her to accept the terms of the new tenancy agreements, was hostile in his interactions with the tenants and had threatened her with eviction should the terms not be accepted. The tenant stated she signed the new fixed-term tenancy agreements under duress as she feared her family facing dislocation in the middle of school, thus directly affecting her children.

The landlord confirmed rent had increased over the series of tenancy agreements but argued the tenants had agreed to the rent increases in writing. The landlord said he had a right to increase rent over the period of the tenancy pursuant section 43 of the *Act*. This section states, "A landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director on an application under subsection (3), or agreed to by the tenant in writing."

In addition to an application for a return of rents paid, the tenants sought return of utilities paid in 2016. The tenants said water was included in the original rent agreement and therefore should have been covered by the landlord. The landlord acknowledged he charged this portion of the utilities to the tenants but argued the consumption was very high and therefore unreasonable for him to include with rent. Furthermore, the landlord argued that the tenants had agreed to pay the water bill for 2016 when the parties negotiated a continuation of the tenancy. As part of his evidentiary package, the landlord included an email dated July 12, 2017 from the tenants which stated as follows:

In an effort to move forward, we are willing to pay the following water consumption bills after receiving copies of bills (not sewer, garbage, etc...):

- Quarter 2 2016 (April – June) due date in September;
- Quarter 3 2016 (July – September) due date in December;
- Quarter 4 2016 (October – December) due date in March of the next year; and
- Quarter 1 2017 (January – March) due date in June.

We will also agree to pay monthly rent in the amount of \$2,400 effective August 1, 2017 (3 months earlier than is required by the *Residential Tenancy Act*) which represents an increase of 6.67% significantly more than the 3.7% set by the Residential Tenancy Branch for 2017.

Analysis

The tenant argued during the hearing that she only agreed to the rental increases after the landlord had threatened her with eviction. The tenant stated her children were enrolled in nearby schools and she did not wish to disturb their studies, thus she agreed to the landlord's demands to pay an increased rate of rent following the expiration of the fixed-term tenancies the parties had entered into.

Residential Tenancy Policy Guideline #30 examines the issue of fixed-term tenancies and it notes as follows:

A fixed term tenancy agreement has a definite commencement date and expiry date....A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms. Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent increases are met.

This Policy Guideline must be considered in conjunction with section 43(1)(c) of the *Act* which permits a rent increase above the legislated amount when it has been agreed to by the tenant in writing. The tenant argued that an agreement was only reached under duress. I therefore must examine the issue of duress as it relates to the formation of a contract.

Lemoine v. Griffith, [2012] ABQB 685 at 127 explains duress as the coercion of another's will so as to vitiate consent...in other words, a threat...economic duress is

usually only found sufficient to vitiate consent where there has been a threat and the pressure exerted by that threat must be “illegitimate” in nature.

The test articulated by the Privy Council in *Pao On v. Lau Yiu Long*, [1980] A.C. 614 at 635 sets out for factors which are still considered by more recent decisions as indicating coercion of the will as it relates to duress. They are listed as follows:

- 1) Whether the person alleged to have been coerced did or did not protest
- 2) Whether, at the time they were allegedly coerced into making the contract they did or did not have an alternative course open to them such as an adequate legal remedy
- 3) Whether they were independently advised
- 4) Whether after entering the contract they took steps to avoid it

After reviewing the evidence presented by both parties and having considered the oral testimony from the landlord and tenant, I find the tenant has failed to show they agreed to the terms of the consecutive fixed-term tenancy agreements under duress. At the time the parties were contemplating the terms of their new tenancy, and a landlord had the power increase rent as they saw fit between fixed-term tenancies. Legislation passed by the Provincial Government in December 2017 has since put a stop to this practice; however, at the time the parties entered into their final agreement in August 2017 a landlord was entitled to increase rent on a fixed-term tenancy at their discretion. While the tenants have alleged duress, I find the tenants in fact attempted to negotiate a new rental contract. An email from the tenants to the landlord on July 12, 2017 shows their negotiations and demonstrates they intended to be bound by the terms of their proposal for a new tenancy, whereby they agreed to pay the water bill for 2016 and pay an increased rent. I find therefore that they were not coerced into entering an agreement they did not approve of. Furthermore, while dislocation from a home is certainly stressful, I find that the tenants had an alternative choice had they not agreed to sign a new tenancy agreement with the landlord because it was open to them to seek other accommodation.

Conclusion

The tenants' application for a monetary award is dismissed without leave to reapply.

The tenants must bear the cost of their own filing fee.

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: September 7, 2018

Residential Tenancy Branch