



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0996964 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

On August 17, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me and the Landlord acknowledged that he did not submit any evidence for this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Should the Tenant receive a Monetary Order for compensation, in accordance with Section 67 of the Act?

Background and Evidence

The Landlord no longer had any records of the tenancy; however, agreed with the Tenant about the following terms:

The month-to-month tenancy began in the fall of 2000. The most recently established rent of \$750.00 was payable on the first of each month. The Landlord collected a security deposit of \$262.00. The tenancy ended on December 31, 2016.

Tenant's Evidence:

The Tenant testified that in February 2015, she received a written notice of a rent increase that would be effective June 1, 2015 and would raise the rent from \$610.00 to \$625.00. The Tenant is not disputing this rent increase.

The Tenant stated that on June 10, 2015, the Landlord presented a new Tenancy Agreement to her. The Tenancy Agreement contained the same terms as her previous Tenancy Agreement with the exception that the rent would be \$750.00 starting on August 1, 2015. The Tenant is unaware of the reason the Landlord presented her with the new Tenancy Agreement and stated she was happy living in the rental unit and had no conversations with the Landlord about possibly leaving.

The Tenant testified that, although her bank statement shows that she continued to pay \$610.00 in June and July of 2015, the building manager would attend to her residence to obtain the \$15.00 cash in order to enforce the first rent increase. In August of 2015, she provided the Landlord another \$140.00 to supplement her post-dated cheque of \$610.00. As of September 2015, the Tenant provided the Landlord with \$750.00 cheques for the rest of the tenancy.

The Tenant stated that the Landlord's actions with the second rent increase, via the new Tenancy Agreement, are a breach of Section 42 of the Act. The Tenant is claiming compensation for the illegal rent increase, in the amount of \$2,125.00, as she believes she over-paid \$125.00, for seventeen months (August 2015 to December 2016).

The Tenant testified that she received a Two-Month Notice to End Tenancy for Landlord's Use of Property in October 2016. The Notice required the Tenant to vacate the rental unit by December 31, 2016. The Tenant provided bank statements that showed she paid rent for the months of October, November and December 2016. The Tenant is claiming compensation for one month's rent, in accordance with Section 51 of the Act. The Tenant claims \$750.00, or in the alternative, \$625.00 if the second rent increase is found to be contrary to the Act.

The Tenant vacated her rental unit by December 31, 2016; however, her rent cheque that she previously provided for January 2017, was cashed by the Landlord. The Tenant provided bank statements to support that the cheque had been cashed by the Landlord on December 30, 2016. The Tenant claims that the Landlord was not entitled to that rent and requests compensation for \$750.00.

Landlord's Evidence:

The Landlord admitted to providing the notice of a rent increase to the Tenant in February 2015. The Landlord pointed out that the Tenant continued to provide the Landlord \$610.00 cheques in June, July and August 2015. The Landlord did not comment on the possibility of the building manager collecting the balance from the Tenant.

The Landlord stated that the Tenant had notified him that she would be moving and when she changed her mind, he asked her to sign a new Tenancy Agreement on June 10, 2015, with an established rent of \$750.00.

The Landlord did not dispute the claims for compensation regarding the amount of one month's rent in relation to Section 51, or the \$750.00 claim for the cheque that was cashed on December 30, 2016.

Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the Landlord's undisputed testimony that he raised the Tenant's rent from \$610.00 to \$625.00, effective on June 1, 2015.

When I determine whether the Landlord unlawfully raised the rent by establishing a new Tenancy Agreement, dated June 10, 2015, I consider whether the tenancy ended prior to the new Tenancy Agreement being signed. The Tenant testified that she did not provide notice to the Landlord that she intended to end the tenancy. The Landlord stated the Tenant did provide notice to end the tenancy; however, did not claim the Tenant moved out of the rental unit or provide any documentation to support his claim that the Tenant provided notice. I have no evidence to indicate that the tenancy between the Tenant and the Landlord ended prior to the signing of the new Tenancy

Agreement, dated June 10, 2015. As a result, and based on a balance of probabilities, I find that the tenancy continued without disruption, from the fall of 2000 to December 2016. As a result, I find that the new Tenancy Agreement, dated June 10, 2015, established a second rent increase in 2015.

The Tenant consented to the amount of a rent increase by signing the Tenancy Agreement, dated June 10, 2018; however, I refer to Section 42 of the Act that provides the following guidance:

- (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.

Policy Guideline 37 also refers to the circumstances where a Tenant may agree to a rent increase greater than the maximum allowable percentage amount:

A Tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the Tenant agrees to an additional rent increase, that agreement must be in writing. The Tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the Tenant's signed agreement to that increase. The Landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The Landlord must issue to the Tenant a Notice of Rent Increase. It is recommended the Landlord attach a copy of the agreement to the Notice of Rent Increase given to the Tenant. Tenants must be given three full months' notice of the increase. Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

Based on the testimony, evidence, Section 42 of the Act and Policy Guideline 37, I find the Landlord breached the Act when he imposed a second rent increase within a 12-month period when he raised the rent to \$750.00 with the Tenancy Agreement, dated June 10, 2015. The Landlord did not follow the requirements in the Legislation regarding the timing and notice of rent increases. I find that the Landlord also breached the Act by failing to provide the Tenant with at least 3 months' notice before the effective date of a rent increase and further, that the Landlord failed to use the approved form in his attempt to raise the rent a second time in 2015.

As the Landlord breached Section 42(1), (2) and (3) of the Act, I find that (4) does not apply and the rent increase will not take effect on the earliest day that does comply.

For all of these reasons, I find that the Landlord unlawfully raised the rent from \$625.00 to \$750.00, as of August 1, 2015. As a result, I find that the Tenant has established a monetary claim in the amount of \$2,125.00 for rent that she has overpaid between August, 2015 and December 2016.

I accept the Tenant's undisputed evidence that the Landlord failed to compensate the Tenant one month's rent, in accordance with Section 51 of the Act, in the amount of \$625.00. I find the Tenant has established a monetary claim in the amount of \$625.00.

I accept the Tenant's undisputed evidence that the Landlord cashed a \$750.00 rent cheque after the tenancy was over and that the Landlord had no legal right to cash that cheque. I find the Tenant has established a monetary claim in the amount of \$750.00.

I issue a Monetary Order in the Tenant's favour under the following terms, which allows the Tenant to recover overpaid rent due to an unlawful rent increase, compensation under Section 51 of the Act and compensation for a wrongfully cashed rent cheque:

Item	Amount
Overpaid rent from August 2015-December 2016	\$2,125.00
Compensation under Section 51 of the Act	625.00
Compensation for wrongfully cashed cheque	750.00

Total Monetary Order	\$3,500.00
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Conclusion

I grant the Tenant a Monetary Order for the amount of \$3,500.00, in accordance with Section 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court 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: December 18, 2018

Residential Tenancy Branch