



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR DRI MNDCT OLC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for the following:

- An order disputing and setting aside a rent increase pursuant to sections 41, 42 and 43;
- A monetary order for damage or compensation pursuant to section 67; and
- An order requiring the landlord to comply with the *Act*, regulation and tenancy agreement pursuant to section 62.

The landlord and both tenants attended. At the outset of the hearing, I confirmed service of hearing documents and evidence upon each other. No issues of service were raised. I find the parties were served in accordance with the *Act*.

I also explained the hearing process to the parties and permitted the parties to ask questions.

Preliminary Issue

The tenants filed an Application for Dispute Resolution on November 15, 2018. The parties agreed the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") on November 30, 2018. The tenants filed an Amendment on November 30, 2018 to add a request to cancel the Ten-Day Notice. The landlord agreed to the amendment of the tenants' claim. I allowed the tenants' application to be amended to include this claim.

Section 55 of the *Act* requires, when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy in compliance with the *Act*.

Issue(s) to be Decided

Are the tenants entitled to the following:

- An order cancelling the Ten-Day Notice pursuant to section 46;
- An order disputing and setting aside a rent increase pursuant to sections 41, 42 and 43;
- A monetary order for damage or compensation pursuant to section 67;
- An order requiring the landlord to comply with the *Act*, regulation and tenancy agreement pursuant to section 62.

Is the landlord entitled to an order of possession pursuant to section 52 of the *Act*?

Background and Evidence

The parties agreed the tenants started renting a unit from the landlord in 2012; in 2016, the tenants moved to the current unit and have resided there ever since. Until September 2017, the tenants paid rent of \$850.00 a month payable on the first of the month in a month-to-month tenancy. The tenants paid the utilities. The tenants paid a security deposit of \$500.00 at the beginning of the tenancy which the landlord holds.

It was unclear whether there was a written tenancy agreement before September 2017.

The parties agree the landlord issued a Notice of Rent Increase on June 28, 2018 raising the rent from \$850.00 a month to \$1,000.00 effective September 1, 2017. The landlord submitted a copy of the Notice in evidence. This increase was contrary to the allowable rent increase in effect at the time. The tenants testified they did not know there was an allowable rent increase. At no time before this application did they apply to the RTB claiming an unlawful rent increase.

On August 23, 2017, the parties signed a tenancy agreement stating that, starting September 1, 2017, rent would be \$1,000.00 a month for a one-year fixed term tenancy, an increase of \$150.00 from the previous rent of \$850.00. The parties testified that in all other respects, the tenancy continued as in the past.

The tenants testified that they believed they *had* to sign the agreement or the landlord would force them and their family to leave the unit. They acknowledge the landlord did not specifically state this.

On the other hand, the landlord testified the new rent of \$1,000.00 was a negotiated rate to which all the parties had agreed. He stated he had not raised the tenants' rent for several years. He reported he was kind and helpful to the tenants throughout the tenancy but that it was time, in his assessment, to raise the rent as the tenants had two years earlier moved to a better-quality unit. He testified all parties agreed at the time of signing the agreement that the rent

increase was fair; the discussion was amicable and relations between the parties continued thereafter as before.

The landlord submitted a copy of the tenancy agreement in evidence.

The tenants testified that they learned in October 2018 that the \$150.00 a month increase in rent on September 1, 2017 was contrary to the allowable rent increase permitted under the *Act*. They calculated that the increase was 17.65% and the maximum allowed under the Act was 5.7%. In other words, the allowable rent increase was only \$48.45 which, added to \$850.00, meant, in their assessment, that the landlord could only lawfully increase the monthly rent to \$898.45 commencing September 1, 2018.

Based on this calculation, the tenants stated they believed they had overpaid the landlord \$101.50 a month for eleven months for a total of \$1,117.05.

The tenants requested the landlord recalculate the rent and provide them with a rental credit of \$1,117.05; the landlord refused. Accordingly, the tenants informed the landlord they would not pay rent for the month of November 2018. They brought this application on November 15, 2018 to have the rental increase set aside, to obtain an award for damages and compensation, and to obtain an order requiring the landlord to comply with the *Act*.

The landlord issued the Ten-Day Notice on November 30, 2018 for \$1,000.00 in outstanding rent with an effective date of October 14, 2018 (corrected to December 10, 2018). He submitted a copy of the Ten-Day Notice as evidence. The landlord filed a witnessed Proof of Service form. The tenants acknowledged receipt of the Ten-Day Notice. They acknowledged they did not pay the outstanding rent within the 5-day period and that it remains unpaid.

Based on the tenants' calculation of their overpayment of rent, they estimated they owed the landlord \$679.85 for rent for the subsequent month, December 2018. The tenants testified they proposed to the landlord they would begin paying the correct rent of \$898.45 a month on January 1, 2019.

The tenants testified they offered cash in the amount of \$679.85 to the landlord on or about the first of December 2018 as the landlord always required that rent payments be in cash. They testified the landlord refused to accept the money.

The landlord denied the tenants attempted to pay any rent in December 2018. As another month's rent was unpaid, he issued a second Ten Day Notice on December 5, 2018 for outstanding rent of \$1,000.00 for December; the tenants filed another application for dispute resolution and the hearing is scheduled for January 28, 2019, as mentioned above.

The tenants continue to occupy the unit.

Analysis

I have reviewed all documentary evidence and testimony of the parties although I will mention only relevant parts in my Decision.

The tenants' claims are based, firstly, on their belief that the landlord compelled them to sign the agreement on an implied threat of eviction. Secondly, the tenants submit that the rental increase in the agreement is an increase by a landlord governed by the *Act* and he did not comply with the statutory limitations on rent increases.

The tenants testified they felt threatened and intimidated by the landlord into signing the agreement. They feared they would be evicted if they did not sign the agreement. This is analogous to the claim of "duress".

In considering the tenants' claim for duress, I understand that an increase in rent in this amount was stressful for the tenants. They testified they found the situation upsetting and disturbing, and believed they had "no choice" but to sign. I understand the tenants have found the increase in rent to be a challenging expense for their family.

In providing evidence, the tenants appeared composed and articulate. They showed a clear understanding of the tenancy agreement and, indeed, have been tenants for many years. They were forthright in acknowledging that their understanding of statutory rent increase limitations was inadequate until recently. I find the tenants are remorseful about the deal the parties negotiated and resentful of the landlord. However, this does not amount to grounds to set aside the agreement between the parties for duress.

I have considered whether the tenants protested during the signing of the documents; whether, at the time they entered into the agreement, they had an alternative course open, such as obtaining legal advice, applying for a legal remedy under the *Act*, or moving; whether they took steps before and after the agreement was signed to set it aside.

Considering all the evidence submitted and the testimony of the parties, I find the tenants have not established duress. At any time during negotiations, the tenants were free to obtain independent counsel or to receive assistance. After the agreement was signed, the tenants took no steps to set it aside for over a year.

In considering the testimony of the parties and the evidence submitted, I find the tenants freely entered into the agreement. I find the tenants have failed to establish any reasonable possibility that there were threats, coercion or duress compelling them to sign the document. I find the tenants' claim of duress fails.

I further find this is not a situation in which the landlord imposed a rent increase but one in which the parties freely negotiated the terms of an agreement, being the tenancy agreement of August

23, 2018. The *Act's* provisions with respect to rent increases does not apply as the tenants voluntarily entered into a tenancy agreement with the landlord.

In summary, I find the parties freely entered into a binding residential tenancy agreement on August 23, 2017 requiring the tenants to pay rent of \$1,000.00 a month for the unit starting September 1, 2017. I find the agreement is enforceable between the parties.

The tenants' first three claims relate to the increase in rent which they believed to be unlawful. I dismiss all these claims without leave to reapply, as follows:

- An order disputing and setting aside a rent increase pursuant to sections 41, 42 and 43;
- A monetary order for damage or compensation pursuant to section 67;
- An order requiring the landlord to comply with the *Act*, regulation and tenancy agreement pursuant to section 62.

I will now address the tenants' application to cancel the Ten-Day Notice.

I am satisfied the form and content of the Ten-Day Notice complies with section 52 of the *Act*. I find the tenants were served with the Ten-Day Notice on November 30, 2018 in accordance with Section 88 of the *Act*.

I find the tenants have not paid the overdue rent within the five-day period following service.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, corrected to December 10, 2018, requiring the tenants to vacate the rental unit by December 10, 2018. Accordingly, I dismiss the tenants' application to cancel the Ten-Day Notice without leave to reapply.

Pursuant to Section 55(1), the director **must** grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with Section 52 and the tenants' application is dismissed.

I therefore grant the landlord an order of possession effective two days after service.

Conclusion

I grant the landlord an order of possession which is effective two days after service on the tenants.

This order must be served on the tenants.

If the tenants fail to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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 24, 2018

Residential Tenancy Branch