



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL BC
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR, FFT

Introduction

This hearing was held as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 21, 2019 ("10 Day Notice") and to recover the cost of the filing fee.

The tenant and an agent for the landlord CS ("agent") attended the teleconference hearing. The hearing process was explained including expected conduct during the hearing. Evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the Rules of Procedure, and testimony provided. I have only referred to the evidence and testimony that is relevant to the matters before me and the findings in this decision.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

The agent confirmed their email address at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to the landlord and sent by regular mail to the tenant as the tenant did not have an email address.

In addition, while the parties were offered the ability to negotiate a mutually settled agreement, the tenant was very argumentative throughout the hearing, resulting in several cautions for continually interrupting myself and the agent. Ultimately, the tenant refused to agree to a mutually settled agreement with the landlord.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The tenancy began on July 1, 2004. Although a copy of the written tenancy agreement was not submitted in evidence, the parties agreed that the monthly rent started as \$840.00 in 2004 and that by July 1, 2017 the rent had been increased gradually over the years to \$1,025.00 through written Notices of Rent Increase. The tenant denies having received a Notice of Rent Increase form dated June 1, 2018, which was to take effect on October 1, 2018 and raised the monthly rent from \$1,025.00 to \$1,066.00 per month. The tenant claims that the first time they saw the Notice of Rent Increase form dated June 1, 2018 was in the landlord's documentary evidence.

The landlord served the tenant with the 10 Day Notice indicating that \$164.00 in unpaid rent was owed as of January 1, 2019. The effective vacancy date listed on the 10 Day Notice was February 1, 2019. The tenant confirmed receiving the 10 Day Notice on January 21, 2019 and applied to dispute the 10 Day Notice on January 23, 2019, which is within the 5 day timeline provided for under section 46 of the *Act* to dispute the 10 Day Notice.

The tenant agreed that they have not paid the \$41.00 difference in rent and claims that the landlord is lying that they were served with the Notice of Rent Increase form dated June 1, 2018. The agent referred to a letter dated February 27, 2019 ("letter") submitted in evidence from GL, another agent for the landlord. In the "letter" GL indicates that the rent increase form was posted to the tenant's door on or before June 25, 2018 and that the tenant was aware of the rent increase form as the tenant called GL multiple times leaving messages to call and discuss. GL writes that attempts were made to call the tenant back multiple times and received no answer. GL writes that multiple conversations with the tenant occurred regarding past arrears and the tenant becomes very agitated and aggressive.

During the hearing, the tenant raised their voice on many occasions and yelled "all lies" and "I am the liar then" on several occasions.

The tenant referred to the tenant ledger as proof the tenant had met GL at a certain time. The tenant was advised during the hearing that I did not agree that a tenant ledger proved that the tenant had personal meetings with GL prior to a specific date and that such an argument was not logical.

The agent testified that the tenant owes \$246.00 as of the date of the hearing for the rent differential of \$41.00, which is the amount of the rent increase from \$1,025.00 to \$1,066.00, which came into effect on October 1, 2018. The six months which include October 2018 to March 2019 inclusive, at \$41.00 multiplied by six equals \$246.00.

The agent stated that they are willing to accept an order of possession for March 31, 2019 at 1:00 p.m. as the tenant has paid some money for use and occupancy for March 2019.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice to End Tenancy for Unpaid Rent – There is no dispute that the tenant received the 10 Day Notice and disputed the 10 Day Notice within the required 5 day timeline. What is in dispute is whether the tenant was served with the Notice of Rent Increase form dated June 1, 2018, which resulted in the rent being raised by \$41.00 to \$1,066.00 effective October 1, 2018. The maximum allowable rent increase for 2018 was 4.0% under the *Act*. As a result, the maximum amount the landlord was permitted to raise the tenant's rent was \$41.00 to \$1,066.00. Sections 42 and 43 of the *Act* state:

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.

Given the above, I find the amount of \$41.00 is no more than 4% and complies with the *Act*. I have also considered the testimony of the parties and the documentary evidence, which I find supports the agent's testimony that the tenant was served with the Notice of Rent Increase on or before June 25, 2018. I prefer the testimony of the agent over that of the landlord as the agent was consistent and logical throughout the hearing, while the landlord was hostile and illogical with their testimony as noted above.

Section 26 of the *Act* requires that the tenant pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the *Act*. Therefore, based on the above, I find the 10 Day Notice issued by the landlord to be valid and is upheld as the tenant failed to pay the \$41.00 increase between October 1, 2018 to present. Consequently, I dismiss the tenant's application to cancel the 10 Day Notice.

Pursuant to section 55 of the *Act*, I must grant the landlord an order of possession once the 10 Day Notice has been upheld and the tenant's application is dismissed. Therefore, I grant the landlord an order of possession effective **March 31, 2019 at 1:00 p.m.** I find

the tenancy ended on February 21, 2019, which was the effective vacancy date listed on the 10 Day Notice.

I do not grant the tenant the filing fee as the tenant's application has been dismissed.

Conclusion

The tenant's application to cancel the 10 Day Notice and for the filing fee is dismissed, without leave to reapply.

The tenancy ended on February 21, 2019, which was the effective vacancy date listed on the 10 Day Notice.

The landlord has been granted an order of possession effective March 31, 2019 at 1:00 p.m. which must be served on the tenant. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

This decision and the order of possession will be emailed to the landlord, and the decision will be sent by regular mail to the tenant as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 8, 2019

Residential Tenancy Branch