



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANSTRUCTION KELLY LIMITED
PARTNERSHIP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, DRI, FF

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Is the tenant entitled to dispute of an additional rent increase contrary to the Act?

Is the tenant entitled to an order to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed prior to signing the tenancy agreement dated October 5, 2018, monthly rent was \$936.59 payable on the 1st day of each month. A security deposit of \$400.00 was paid.

The tenant claims that the landlord unlawfully issued a rent increase as shown in the submitted copy provided dated October 5, 2018 as the last rent increase for the tenancy was on June 1, 2018 where the current rent was \$936.59; a rent increase of \$338.41 making the new rent \$1,275.00 to begin on November 1, 2018.

Both parties agreed that simultaneously to this, a new signed tenancy agreement dated October 5, 2018 which states the tenancy began on November 1, 2018 on a fixed term tenancy and ends on May 31, 2019. The monthly rent is \$1,275.00 payable on the 1st day of each month. A security deposit of \$400.00 was paid.

The tenant argued that he was made to enter into this tenancy "under duress" with the new landlord. The tenant clarified that the new landlord had threatened to increase the monthly rent to \$1,500.00 if the tenant did not agree. The tenant stated that upon being informed of the "rent increase rules" by his daughter, the tenant notified the new landlord the next day about the rules. The tenant repeated that the landlord had stated that "if I did not agree to pay \$1275 monthly, that he would apply to the Residential Tenancy Branch to have the monthly rent increased to \$1500. The tenant noted that the new landlord had done this prior to taking possession of the property on November 2, 2018. On November 1, 2018 the existing landlord collected 3 post-dated rent cheques for \$936.59 each. The tenant also argued that as a result of the unlawful rent increase the landlord's 10 Day Notice dated February 9, 2019 should be cancelled as it relies upon the monthly rent of \$1,275.00.

The landlord disputed the tenant's claims stating that he was advised by two professional property management companies as well as in consultation with a Residential Tenancy Branch staff member to complete both a notice of rent increase and a new tenancy agreement both on October 5, 2018 with the tenant.

Analysis

Residential Tenancy Branch, Policy Guideline #37, Rent Increases state in part,

*A tenant's rent cannot be increased unless the tenant has been given proper notice in the approved form at least three months before the increase is to take effect. **The tenant's rent can only be increased once every 12 months.** A rent increase that falls within the maximum amount permitted by the applicable Regulation² cannot be disputed at a dispute resolution proceeding.*

A landlord may impose an annual rent increase up to, but not greater than, the percentage amount calculated as follows:

percentage amount = inflation rate

In September of each year, the maximum allowable rent increase percentage amount for the upcoming calendar year rate is published on the Residential Tenancies website at: www.gov.bc.ca/landlordtenant/increase.

The "inflation rate" is defined in the Residential Tenancy Regulation and means the 12 month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect.

*The Legislation specifies that a rent increase **cannot exceed** the percentage amount; therefore a landlord should not round up any cents left in calculating the allowable increase. For example, if the base rent is \$800 and the maximum allowable increase is \$36.80, the landlord can issue a Notice of Rent Increase for a new rent of up to \$836.80, but not \$837.*

In this case, the allowed percentage rate increase for 2018 was 4%, however, as the new landlord was aware of the previous rent increase in June 2018, I find that the notice of rent increase dated October 5, 2018 is invalid and is of no force and affect. As such, the rent increase to \$1,275.00 was invalid.

The landlord spoke to the validity of the 10 Day Notice dated February 9, 2019 as it was also based upon a signed tenancy agreement dated October 5, 2018. I find in this case, the signed tenancy agreement dated October 5, 2018 was also invalid as I find that the tenant was "under duress" when this was entered into in conjunction with the tenant being served the notice of rent increase dated October 5, 2018. As such, I find that the 10 Day Notice dated February 9, 2019 to be set aside as the details as such show that there was no unpaid rent based upon the notice of rent increase dated October 5, 2018. The tenant's application to cancel the 10 Day Notice dated February 9, 2019 is granted. The tenancy shall continue at the original rent of \$926.59.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenant to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenant's application is granted. The 10 Day Notice dated February 9, 2019 is cancelled. The tenancy shall continue at the original monthly rent of \$936.59.

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: April 11, 2019

Residential Tenancy Branch