



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for monetary compensation, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

One of the Tenants was present for the teleconference hearing, as was a family member of the Landlord acting as agent on behalf of the Landlord (the “Landlord”). The parties were affirmed to be truthful in their testimony. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Landlord stated that they did not serve a copy of their evidence to the Tenants as they were unaware of this requirement. As such, the parties were informed that the Landlord’s evidence was not be accepted and would not be considered as part of this decision.

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

Issues to be Decided

Should the One Month Notice be cancelled?

If the One Month Notice is upheld, is the Landlord entitled to an Order of Possession?

Are the Tenants entitled to monetary compensation?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy started around December 2015. Rent was initially set at \$650.00, due on the 8th day of each month. A rent increase was provided in 2017 to take effect for January 2018. A security deposit of \$325.00 was paid at the outset of the tenancy.

The parties had come to an agreement regarding the One Month Notice prior to the hearing. The Tenant submitted a Mutual Agreement to End Tenancy into evidence. The agreement was signed by both parties on March 3, 2019 to end the tenancy on July 7, 2019. As such, the parties were provided with the option to have this written as a settlement agreement which will be outlined below.

As for the Tenants' claim for monetary compensation, the parties were offered the opportunity to discuss a possible settlement agreement but were not able to come to an agreement.

The Tenant stated that around September 2017 rent was increased from \$650.00 per month to \$750.00, set to begin in January 2018. The Tenant stated that they paid the amount of \$750.00 for one year, ending in January 2019 when they realized that the rent increase amount was more than the legal allowable increase amount. The Tenant stated that they began paying \$676.00, which is the amount that the rent would have increased with the allowable 4% increase amount that was effective in 2018.

The Landlord agreed that the Tenant paid the increased amount of \$750.00 for 12 months and that the rent increase should have only increased the rent to \$676.00. As such, the parties were in agreement that the Tenants overpaid an amount of \$74.00 each month for a total of \$888.00 paid over 12 months.

Analysis

As stated in Section 41 of the *Act*, a landlord must not increase rent except as provided under the *Act*. In 2018 the allowable rent increase amount was 4% which would have allowed an increase of up to \$26.00. Had the rent been increased the legal amount

during this time, rent would have increased from \$650.00 to \$676.00. As the Landlord increased rent by \$100.00, I find that they illegally increased rent an additional \$74.00 per month.

Although the parties did not submit any documentary evidence regarding the notice of rent increase, neither party disputed that the rent increase should have been \$26.00 per month for a total of \$676.00 due each month. Therefore, I accept the testimony of both parties that the additional increase amount of \$74.00 was paid for 12 months for a total overpayment of \$888.00. As the overpayment amount of \$888.00 was due to a rent increase that was not provided in accordance with the *Act*, I find that the Tenants are entitled to the return of this amount.

Pursuant to Section 72 of the *Act*, I also award the recovery of the filing fee in the amount of \$100.00, for total compensation of \$988.00. The Tenants are awarded a Monetary Order in this amount to serve to the Landlord for payment or alternatively, the Tenants are authorized to deduct the amount owed from future rent payments until they have received full compensation for the amount owed.

Settlement Agreement

Pursuant to Section 63 of the *Act*, parties may be provided the opportunity to settle their dispute and for a settlement agreement to be recorded in the form of a decision and order. The parties came to the following agreement regarding the dispute over the One Month Notice:

1. The tenancy will end on July 7, 2019 at 1:00 pm.
2. The One Month Notices dated February 12, 2019 and February 22, 2019 are cancelled and of no force or effect.
3. In order to uphold this agreement, the Landlord is granted an Order of Possession effective July 7, 2019 at 1:00 pm.

The parties confirmed that they were entering into this settlement agreement voluntarily and free from any pressure or coercion. They also confirmed their understanding that a settlement agreement is final and binding and constitutes full resolution of the Tenants' application regarding the One Month Notice.

Conclusion

The parties are ordered to follow the terms of the settlement agreement as outlined above. In order to uphold the settlement agreement, the Landlord is granted an **Order of Possession, effective on July 7, 2019 at 1:00 pm**. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$988.00** for overpayment of an illegal rent increase and for the recovery of the filing fee paid for the application. The Tenants must serve this Order to the Landlord for payment or may deduct the amount owing from future rent payments until the amount owed is satisfied. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: April 09, 2019

Residential Tenancy Branch