



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL-S MNDL-S OPB OPM**
CNC CNR DRI FFT LRE OLC RP

Introduction

This hearing dealt with applications by the landlord and the tenant pursuant to the Residential Tenancy *Act* ("Act").

The landlord applied for:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38;
- An order of possession for breach of a vacate clause pursuant to section 55; and
- An Order of Possession for a Mutual Agreement to End Tenancy pursuant to section 55.

The tenants applied for:

- An order to cancel a 1 Month Notice for Cause pursuant to section 47;
- An order to cancel a 10 Day Notice for Unpaid Rent or Utilities pursuant to section 46
- An order to dispute a rent increase pursuant to section 41;
- Authorization to recover the filing fees from the landlord pursuant to section 72;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62; and
- An order for regular repairs to be done to the rental unit pursuant to section 32.

The landlord and both of the tenants attended the hearing. Both parties acknowledged receiving the others' application for dispute resolution and were prepared to deal with the matters of the application. The hearing process was explained, and parties were

given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing. While I have turned my mind to all the documentary evidence and testimony, not all details of the parties' respective submissions and/or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Preliminary Issue - Settlement reached on Mutual End to Tenancy

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of their disputes.

Both parties agreed to the following final and binding settlement of the issue of the **end to the tenancy** currently under dispute at this time.

1. This tenancy will end at 1:00 p.m. on July 1, 2019, by which time the tenants and any other occupant will have vacated the rental unit.
2. The parties will conduct a condition inspection on Monday, July 1, 2019 at 1:00 p.m.
3. Both parties agree that this tenancy ends by way of this agreement and the Notices to End Tenancy are cancelled and of no further force or effect.
4. The rights and obligations of the parties under the *Act* continue until the tenancy ends in accordance with this agreement.

Both parties testified that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settles **this** aspect of their disputes.

As the tenancy ends on July 1, 2019, the parties agreed the following portions of their claims could also be dismissed:

The following relief sought in the tenants' application is dismissed:

- An order to cancel a 1 Month Notice for Cause pursuant to section 47;
- An order to cancel a 10 Day Notice for Unpaid Rent or Utilities pursuant to section 46;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62; and
- An order for regular repairs to be done to the rental unit pursuant to section 32.

The following relief sought in the landlord's application is dismissed:

- An order of possession for breach of a vacate clause pursuant to section 55; and
- An Order of Possession for a Mutual Agreement to End Tenancy pursuant to section 55.

Preliminary Issue

The landlord's application seeks compensation for damages to the rental unit caused by the tenants, their pets or guests to the property pursuant to section 67 of the *Act*. I determined that the landlord's claim for damages to the property is premature as the tenants have not yet vacated the rental unit and the parties have not yet conducted a condition inspection report to determine the nature and extent of the damage as alleged by the landlord. In accordance with Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure, I dismissed this portion of the landlord's claim with leave to reapply.

I determined the remaining issue brought by the tenant disputing a rent increase pursuant to section 41 of the *Act* was sufficiently related to the issue of the Notices to End Tenancy that were originally in dispute and proceeded to hear that issue.

Issue(s) to be Decided

Was the landlord entitled to increase the rent?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. This tenancy began on May 1, 2018. The tenancy agreement indicates it is a fixed term tenancy to end on January 31, 2019, however the tenancy agreement is incomplete in part 2 where the parties initial the document agreeing on the end dates and reasons to end. Rent was set at \$5,000.00 per month payable on the first day of each month. A security deposit of \$2,500.00 and a pet damage deposit of \$1,500.00 was collected by the landlord which she still holds. The tenancy agreement also contains a 7-page addendum entitled "Residential Sublease Agreement" attached, which redefines the parties as "sublandlord" and "subtenant".

The parties agree the tenants gave the sublandlord/landlord (hereinafter called the landlord) a cheque for \$19,000.00 which included both deposits, together with 3 months' rent. The parties agree that the tenants' rent is fully paid up until the end of the tenancy which is to take place on July 1, 2019.

The tenants testified that the landlord asked them to raise their rent at the beginning of December 2018. The landlord asked the tenant how much more they could afford, and the tenants agreed to pay an additional \$200.00 for February, 2019 and continued to pay the increased rent from February onward.

In the tenant's material is are text messages. An undated text from the landlord reads:

“Would you be able to sign until the end of May? Previously, I was getting \$6,000.00 US for the furnished rental & I’ve been absorbing the difference of about \$2,200.00. I have some additional expenses I have been incurring by keeping things in storage. Could you cover the cost of the storage? It’s comparable to a rent increase of \$200.00”

Another one from the tenants, dated Wednesday, December 12 reads:

“Hey [landlord]! It’s [tenant]. I was wondering if you could put into an email for me the increase to 5200 cad from February on and also, I’m coming into town Friday!”

No formal notices of rent increase were produced or provided as evidence.

The landlord provided the following testimony. When the fixed term tenancy was scheduled to end on January 31, 2019 the tenants were experiencing personal problems related to residency and needed to stay in the rental unit. They kept coming to her to increase the length of the lease. The landlord advised the tenants that her belongings were in storage and it was costing her money to keep it in storage and that is why the tenants offered to pay the additional \$200.00 in rent. She wants to come back to live in the unit with her daughter and she could no longer justify having the tenants stay there while she was unable find suitable accommodations of her own in town.

Analysis

Section 1 of the *Act* provides a definition of landlord:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this *Act* in relation to the rental unit;
- (d) a former landlord, when the context requires this

In their evidence to support the application for repairs to be done to the rental unit, the tenants provided multiple texts and emails to satisfy me the landlord was exercising the powers of a landlord and was performing the duties of a landlord. There is no evidence to show she was occupying the unit and the parties, by their interaction, have demonstrated their commitment to the relationship as that of landlord and tenant. For the purposes of the issue regarding the rent increase, I am satisfied the “sublandlord” is a landlord as defined in section 1.

Rent increases are governed by Part 3 of the *Act*, sections 40 to 43, as shown.

Meaning of "rent increase"

- 40 In this Part, "rent increase" does not include an increase in rent that is
- a) for one or more additional occupants, and
 - b) is authorized under the tenancy agreement by a term referred to in section 13 (2)
- (f) (iv) [*requirements for tenancy agreements: additional occupants*].

Rent increases

- 41 ***A landlord must not increase rent except in accordance with this Part.***

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.
- [emphasis added]**

Effective January 1, 2019, the annual allowable rent increase was 2.5% in British Columbia. For a rent of \$5,000.00, the maximum allowable increase would be \$125.00.

The evidence of both the tenants and the landlord indicate the landlord increased the rent by \$200.00 commencing February 2019. Contrary to section 42(1), the rent was increased within the first 12 months of the tenancy. Further, contrary to 42(3), the landlord did not provide the notice of rent increase in the approved form or provide them with any notice whatsoever. Likewise, as no notice was given, it is impossible to determine whether the landlord gave the tenants 3 months notice before the effective date.

Also, the landlord contravened section 43(1)(a) by imposing a rent increase in an amount greater than the 2.5% allowable in accordance with the regulations and did not obtain the agreement to the increased rent in writing from the tenants as required by section 43(1)(c).

Residential Tenancy Branch Policy Guideline 37 [Rent Increases] provides further clarity regarding rent increases. Part D of the Guideline indicates:

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.

I find the landlord contravened sections 42(1), 42(2), 42(3), 43(1)(a) and (c) when she increased the tenant's rent. In this case, although the tenants commenced paying the increased rent, that does not constitute a written agreement to the rent increase greater than the maximum allowable percentage. In breaching Part 3 of the *Act*, the landlord is not eligible to retain the rent increase for the months of February to June 2019. The tenants application to dispute the rent increase is granted. As there was no application filed by the tenants seeking a monetary order before me, I cannot award them one.

For the additional \$200.00 the tenants paid in rent for the five months between February and June 2019, the landlord should return or refund the tenants \$1,000.00. If the landlord should fail to do so, the tenants are at liberty to file an application for a monetary order.

As the tenant's application was successful, the tenants are entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to section 67 in the amount of \$100.00.

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: July 4, 2019

Residential Tenancy Branch