



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX PENTICTON
REALTY and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes DRI, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 19, 2019 (the "Application"). The Tenant applied to dispute a rent increase that is above the amount allowed by law. The Tenant sought reimbursement for the filing fee.

The Tenant filed an amendment June 20, 2019 removing a request for return of the security deposit.

The Tenant appeared at the hearing. The Agent appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Has there been a rent increase that is above the amount allowed by law?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord, Tenant and a second tenant C.E. The tenancy started July 01, 2018 and is a month-to-month tenancy. Rent is \$1,500.00 per month due on the first day of each month.

The Tenant is disputing the rent amount of \$1,500.00 per month on the basis that he was previously paying \$1,200.00 to the previous owners of the rental unit.

The Tenant testified as follows in relation to the history of this matter. He moved into the rental unit in April of 2017. A tenant by the name of F.C. was living there at the time. The owners of the rental unit were E.P. and L.P. The Tenant met with E.P. and L.P. who agreed to the Tenant living in the rental unit. He does not know if F.C. had a written tenancy agreement with E.P. and L.P. He did not have a written agreement with F.C. or E.P. and L.P. The tenancy was a month-to-month tenancy. F.C. moved out of the rental unit in June of 2018. The Tenant lived in the rental unit alone for one month. On July 01, 2018, C.E. moved into the rental unit. He and C.E. signed the written tenancy agreement with the Landlord starting July 01, 2018. C.E. moved out of the rental unit in December or November of last year.

The Tenant confirmed that rent was always \$1,200.00 per month up until July 01, 2018 when he signed the written tenancy agreement with the Landlord at which point it increased to \$1,500.00. The Tenant testified that new owners purchased the rental unit in June of 2018. He confirmed that the Landlord, as agent for the new owners, came to him with the written tenancy agreement to start July 01, 2018.

The Tenant submitted that the Landlord failed to comply with the *Residential Tenancy Act* (the "Act") in relation to rent increases as they did not give three months notice, did not use the RTB form and the increase exceeds the permitted amount. The Tenant pointed to term 8 in the written tenancy agreement.

The Tenant testified that he felt he had no option but to sign the written tenancy agreement or have no place to live. The Tenant testified that the agent at the time told him that the deal would fall through if he did not agree to the \$1,500.00 rent.

The Tenant's written materials state the following. The Agent came to him and told him that his only option was to sign the new agreement or have no place to live. He signed

the agreement under “distress” as he could not afford to lose his home. He was not told about his rights or “that the new Landlords had to follow and honor the previous agreement, only that I had to sign the new agreement”. The agents for the new owner told him he had to pay \$1,500.00 because it said he would in the description of the home.

The Agent testified as follows. The new owner of the rental unit became the owner around July 01, 2018. The new owner offered the Tenant \$1,500.00 rent because the information provided to the new owner was that the Tenant wanted to stay in the rental unit and rent would be \$1,500.00. All parties discussed the rent amount and agreed with it prior to signing the tenancy agreement. The Tenant agreed to pay the \$1,500.00 rent. The Tenant’s written materials refer to being coerced into signing the tenancy agreement. This did not happen.

Analysis

The rules relating to rent increases are set out in Part 3 of the *Act*. These rules apply to rent increases imposed during a tenancy.

I do not accept that Part 3 of the *Act* applies to the change in rent that occurred here as I find the Tenant and C.E. entered into a new tenancy agreement with the Landlord starting July 01, 2018. At this point, the previous tenancy ended and a new tenancy started. It was open to the parties to agree on whatever rent amount they wished. The tenancy agreement states that rent would be \$1,500.00 per month. The Tenant and C.E. signed the agreement agreeing to this amount. The Tenant is bound by this agreement and must pay the rent set out in it.

I find that the written tenancy agreement was a new tenancy agreement and not simply a continuation of the previous tenancy agreement as it included C.E. as a tenant. C.E. was not previously a tenant of the rental unit.

When parties enter into a new tenancy agreement, Part 3 of the *Act* does not apply. I acknowledge the statements set out in Policy Guideline 30 as follows:

A rent increase between fixed term tenancy agreements with the same tenant for the same unit is subject to the rent increase provisions of the Legislation, including requirements for timing and notice. To raise the rent above the maximum annual allowable amount, the landlord must have either the tenant’s written agreement or an order from an arbitrator. If the tenant agrees to an additional rent increase, the

landlord must issue a Notice of Rent Increase along with a copy of the tenant's signed agreement to the additional amount. The tenant must be given three full months' notice of the increase.

Here, the tenancies are not fixed term tenancies and the new tenancy agreement was not with the same tenants as it included Tenant C.E. The statements in Policy Guideline 30 do not apply.

I do not accept that the Tenant signed the new tenancy agreement under duress. The Agent disputed this. The Tenant has not provided any evidence to support his verbal testimony on this point. It is the Tenant who has the onus to prove duress. The Tenant has failed to do so.

Further, I do not accept that the Tenant had to sign the new tenancy agreement or have no place to live. The Tenant could have not signed the new tenancy agreement and his tenancy with E.P. and L.P. would simply have continued. None of the landlords, including E.P., L.P. or the new owner could have ended the tenancy other than in accordance with the *Act*.

I find the written tenancy agreement was a new tenancy agreement and therefore not subject to Part 3 of the *Act*. The Landlord was not obligated to comply with Part 3 of the *Act*. The change in rent from \$1,200.00 to \$1,500.00 was not contrary to the *Act*. The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 06, 2019

Residential Tenancy Branch