



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing convened as a Tenants' Application for Dispute Resolution, filed on May 27, 2019, in which the Tenants requested monetary compensation from the Landlords for rent paid over and above the allowable amounts.

The hearing was conducted by teleconference at 1:30 p.m. on September 3, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was also assisted by an interpreter, H.B.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issue to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlords?

Background and Evidence

The Tenant, K.S., testified that the tenancy began December 1, 2013. She confirmed that the rent was \$1,100.00 when they first moved in, in addition to utilities. The tenancy ended on April 14, 2019.

A copy of a residential tenancy agreement was provided in evidence.

In the within action the Tenants sought the sum of \$10,500.00 representing the amount they claim to have overpaid as a result of alleged illegal rent increases. In this respect she testified that her rent was raised as follows:

- on June 1, 2015 the rent was raised by \$50.00 to \$1,150.00;
- on June 1, 2016 the rent was raised by another \$50.00 to \$1,200.00;
- on June 1, 2017 the rent was raised by \$200.00 to \$1,400.00; and,
- on June 1, 2018 the rent was raised by \$300.00 to \$1,700.00.

The Tenant testified that they did not receive a Notice of Rent Increase in accordance with the *Act* or the *Regulations* nor did they receive three months' notice of the intended increase. The Tenant further stated that Landlord merely asked the Tenants to pay more rent and they felt that they had no choice but to pay as requested as they needed a place to live. The Tenant further stated that she told the Landlord that he was charging too much, and he responded that rents were "way higher" and that he needed to charge more. She also claimed that he threatened to sell the property on numerous occasions if they would not pay more rent.

The Tenant testified that when the Landlords raised the rent by \$300.00 per month, they simply could not afford to live there anymore and ended the tenancy.

The Tenant confirmed that she did not understand she was able to dispute these rent increases during the tenancy, and was only informed when she called the Residential Tenancy Branch about the final \$300.00 per month increase.

In response to the Tenants' claims the Landlord, S.S.S., testified as follows.

The Landlord confirmed that the Tenants moved into the rental unit December 1, 2013 and paid \$1,100.00 per month. He further confirmed that in 2015 the rent was increased to \$1,050.00 and to \$1,200.00 in 2016.

The Landlord testified that rent in 2017 was increased to \$1,400.00; however, he noted this was also at the same time when more people moved into the basement suite and he began contributing \$150.00 to the Tenant for the increased cost of the electrical utility such that she was only paying another \$50.00 per month (he confirmed the electrical utility was in her name.)

In terms of the 2018 rent increase, the Landlord stated this was because the Tenants' two brothers moved into the rental unit. He claimed that that his hot water had increased and his insurance was higher and she offered to pay \$1,700.00 because she has more people living in the unit. The Landlord clarified that in 2018 there was no increase, but it went up to \$1,700.00 in January 2019.

In terms of how the rent increases were effected, the Landlord claimed that all of the conversations were verbal.

The Landlord further testified that the Tenant never questioned the amount or complained about the rent increases.

The Landlord also claimed that he did not sign a tenancy agreement. When I pointed out that the signature on the tenancy agreement submitted in evidence was the same as the signature on the receipts, the Landlord stated that he did not sign the agreement.

The Landlord also claimed that the Tenant did not provide sufficient notice to end her tenancy, and left garbage and oil cans at the rental unit.

In reply the Tenant stated as follows. The Tenant stated that at the time the tenancy began there were three tenants, one of the signatures was in fact her brother so he was there the entire time. She also noted that at no time did the Landlord tell her that she couldn't have other people living there.

The Tenant testified that she did complain about the rent. She also stated that when they first moved in they were paying the utilities for the entire home, even though there were others living in the basement. For the first two years the utilities were in the Landlords' names and they would simply ask for the Tenants to contribute. After two years she called B.C. Hydro and found out that there was a credit on the account and she withheld \$150.00 from the rent that month because they had overpaid. Around that time the utility bill was put in her mom's name in 2015 or 2016. The Tenant stated that the downstairs renters did not contribute to the cost; however, when they had more

people move in and wanted to share the laundry, the Tenant asked the downstairs renters to pay \$25.00 towards the laundry.

Analysis

After consideration of the testimony, evidence and submissions of the parties, and on a balance of probabilities I find as follows.

Rent may only be increased in accordance with Part 3 of the *Residential Tenancy Act* (the “Act”) and Part 4 the *Residential Tenancy Regulations* (the “Regulations”); these sections read as follows:

Part 3 — What Rent Increases Are Allowed

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.

Part 4 — Rent Increases

Annual rent increase

22 (1)In this section, "**inflation rate**" 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.

(2)For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or before December 31, 2018, a landlord may impose a rent increase that is no greater than the amount calculated as follows:

$$\text{percentage amount} = \text{inflation rate} + 2\%.$$

(3)For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2019, a landlord may impose a rent increase that is no greater than the amount calculated as follows:

$$\text{percentage amount} = \text{inflation rate}.$$

(4)If a landlord has

(a)given notice under section 42 of the Act for a rent increase with an effective date on or after January 1, 2019 before subsection (3) comes into force, and

(b)included in the notice a rent increase in an amount calculated in accordance with subsection (2) of this section,

the landlord must give a second notice, before the effective date in the notice described in paragraph (a), of the rent increase in an amount calculated in accordance with subsection (3) of this section.

(5) For certainty, the notice period in section 42 (2) of the Act does not apply to the second notice required under subsection (4) of this section.

In the case before me, the undisputed evidence is that the Landlords verbally requested an increase in rent during the years 2015, 2016, 2017 and 2018. In each case the Landlords failed to issue a Notice of Rent Increase on the prescribed form (section 42(3)) and failed to give the Tenants the required notice (section 42(2)).

The amount of the increase is prescribed by the *Regulations*. For the years in question those allowable rent increases were as follows:

Year	Maximum Allowable Rent Increase
2019	2.5%
2018	4.0%
2017	3.7%
2016	2.9%
2015	2.5%

I therefore also find that in each case, the Landlords also raised the rent above the allowable amounts prescribed by the *Regulations*.

Although not specifically argued by these Landlords, it is notable that landlords may not retroactively apply a rent increase or catch up on rent increases if they did not issue a rent increase in a previous year.

A tenant may agree to a rent increase pursuant to section 43(1)(c) of the *Act*, however such an agreement *must* be in writing. The fact a tenant pays increased rent when asked is not evidence of their agreement, as many tenants will pay simply to avoid being evicted, particularly in difficult housing markets. In the case before me I find the Tenants did not agree to the rent increases and paid as they feared being evicted. I also reject the Landlord's testimony that the Tenants *offered* to pay \$1,700.00.

I accept the Tenants' evidence that her brother lived in the rental unit throughout the tenancy. This is evidenced by the residential tenancy agreement provided in evidence. I do not accept the Landlord's testimony that he did not sign this document; as noted,

his signature matches his signature on other documents introduced in evidence and I therefore find, on balance that he signed the tenancy agreement. That said, even if I found the Tenants brothers moved into the rental unit at a later time, which I have not, the Landlord was not permitted to raise the rent on that basis. As noted above, section 40 of the *Act* allows a landlord to increase rent for additional occupants provided that such increases are contemplated at the time the parties enter into the tenancy agreement *and* specifically provided for in the tenancy agreement; in this case there is no such authority in the agreement.

I also find that the arrangement with respect to the electrical utility has no bearing on the rent paid. The parties are reminded that any term in a tenancy agreement which provides that one tenant must keep a utility account in their name, and seek payment of the utility from other tenants is unconscionable. Should the rental building contain more than one separate rental unit, the Landlords must put the utility accounts in their names.

I therefore find the Landlords raised the rent contrary to the *Act* and the *Regulations*. As such I find that the Tenants are permitted, pursuant to section 43(5) of the *Act*, to recover the amounts they paid to the Landlords pursuant to the illegal increases.

For clarity, I find the Tenants are entitled to recover any amounts paid over the original rent amount of \$1,100.00 per month. I accept the Tenants evidence as to the amounts paid as well as the date of commencement of payment. Where the testimony of the Tenant, K.S., and the Landlord, S.S.S. conflicts, I prefer the Tenant's. I found her to be straightforward and consistent in her testimony; conversely, I found the Landlord's testimony regarding the tenancy agreement, as well as his claim the Tenants offered to pay \$1,700.00 lacking in credibility.

I therefore award the Tenants recovery of the amounts paid over and above the \$1,100.00 rent amount provided for in the tenancy agreement as follows:

Allowable rent	Amount paid by Tenants	time period	Amount overpaid (monthly)	Amount overpaid (total per year)
\$1,100.00	\$1,150.00	June 1, 2015 – May 31, 2016	\$50.00	\$600.00
\$1,100.00	\$1,200.00	June 1, 2016 – May 31, 2017	\$100.00	\$1,200.00
\$1,100.00	\$1,400.00	June 1, 2017 – May 31, 2018	\$300.00	\$3,600.00
\$1,100.00	\$1,700.00	June 1, 2018 – March 31, 2019	\$600.00	\$6,000.00

				\$11,400.00
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Conclusion

The Tenants claim for monetary compensation for rent paid over the allowable amount is granted. The Tenants are entitled to a Monetary Order in the amount of **\$11,400.00**. this Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial 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: September 18, 2019

Residential Tenancy Branch