



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

DRI, OLC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “*Act*”) to dispute a rent increase, for an order for the Landlords to comply with the *Act*, *Residential Tenancy Regulation* (the “*Regulation*”), and/or tenancy agreement, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Tenants were present for the hearing while no one called in for the Landlords during the approximately 18 minutes that the phone line was monitored. The Tenants were affirmed to be truthful in their testimony and confirmed that each Landlord was served with the Notice of Dispute Resolution Proceeding package and a copy of their evidence by registered mail. The Tenants submitted a copy of the registered mail receipts and the tracking numbers are included on the front page of this decision.

Entering the tracking numbers on the Canada Post website confirms that all three packages were sent on August 1, 2019 and were delivered and signed for on August 23, 2019. As such, I find that the Landlords were served in accordance with Sections 88 and 89 of the *Act*. The Tenants stated that they did not receive any evidence from the Landlords.

I have considered 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

Were the Tenants issued an illegal rent increase?

Should the Landlords be ordered to comply with the *Act*, *Regulation* and/or tenancy agreement?

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

Background and Evidence

The Tenants provided undisputed testimony on the tenancy which was confirmed by the tenancy agreement submitted into evidence. The tenancy began on August 10, 2018 and was for a fixed term set to end on July 31, 2019. Rent in the amount of \$4,300.00 is due on the first day of each month. A security deposit of \$2,150.00 was paid at the start of the tenancy.

The Tenants testified that the Landlords filled out the section of the tenancy agreement stating that the Tenants must vacate at the end of the fixed term, although a reason was not provided on the tenancy agreement. The Tenants stated that they questioned this at the start of the tenancy and were told that it was protection for the Landlords in case they were not good tenants. The Tenants submitted that they stated their intent to be long term tenants and the Landlords confirmed that they could stay long term.

The Tenants stated that approximately one month before the fixed term was set to end they received a message from the Landlords to inform them of a rent increase to \$4,800.00 due to increased costs for the rental unit and if the Tenants did not agree then the Landlords would take over the rental unit. The Tenants submitted a copy of a text message into evidence dated June 11, 2019. In the message the Landlord writes in part the following:

We need to have the rent increase to \$4,800 monthly. Hope you can understand and let me know you can accept to stay or not. We can sign more than one year tenancy agreement if you like.

The Tenants stated that that they did not agree so the Landlords proposed a rent increase to \$4,500.00 which the Tenants also did not agree to. The Tenants confirmed that they did not receive a notice of rent increase and did not sign a new tenancy agreement.

The Tenants stated that they provided the Landlord with information about legal rent increases, including the online calculator from the Residential Tenancy Branch regarding the amount that rent can be legally increased. The Tenants submitted a copy of messages with the Landlords dated July 2, 2019 in which they sent links from the Residential Tenancy Branch to the Landlords. The Landlords responded with a message that states the following:

I think we both misunderstanding, we were saying that after new agreement, will follow BC laws.

The Tenants stated that they are requesting that the Landlords be ordered to follow the laws now, both regarding rent increases and fixed term tenancies. The Tenants noted that since they

did not agree to sign a new tenancy agreement with a new rent amount, the Landlords have been trying to get them to move out.

They referenced a letter from the Landlords dated July 6, 2019 in which the Landlords advise the Tenants that the tenancy agreement will terminate on July 31, 2019 and that the Tenants must vacate by that date. The Tenants stated their position that their tenancy continues on a month-to-month basis at the same monthly rent of \$4,300.00.

The Tenants also noted that they were told the Landlords' brother will move in and stated that they recently received a Two Month Notice to End Tenancy for Landlord's Use of Property that they intend on disputing.

Analysis

Regarding the Tenants' application to dispute a rent increase, I find that no rent increase has been issued to the Tenants. The Tenants confirmed that they did not receive a notice of rent increase form and therefore I find that the rent was not increased in accordance with Section 42(3) of the *Act* which requires a rent increase to be issued in the correct form.

I also note that while rent may be increased in an amount agreed upon in writing by the Tenants, based on the testimony and evidence of the Tenants, I do not find that they have agreed to any increase in rent.

As the evidence shows the Landlords' intentions to increase the rent to either \$4,800.00 or \$4,500.00, both of these increases are outside of the legal rent increase amount in accordance with Section 43(1) of the *Act*.

Therefore, I find that the rent has not been increased in accordance with the *Act* and as such, the rent remains \$4,300.00 due on the first day of each month as per the tenancy agreement.

Regarding the fixed term tenancy, while the tenancy agreement indicates that the Tenants must move out at the end of the fixed term, there was no reason provided on the tenancy agreement. Section 13.1 of the *Regulation* states the following:

13.1 (1) In this section, "**close family member**" has the same meaning as in section 49 (1) of the *Act*.

(2) For the purposes of section 97 (2) (a.1) of the *Act* [*prescribing circumstances when landlord may include term requiring tenant to vacate*], the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that

(a) the landlord is an individual, and

(b) that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

Upon review of the tenancy agreement, I find that the Landlords did not provide a reason as to why the tenancy ends at the end of the fixed term which is noted as 'required' on the tenancy agreement. Therefore, I accept the testimony of the Tenants who stated that the Landlords indicated a move-out clause due to possible concerns over the Tenants and a need to have them move out.

As such, I find that this term of the tenancy agreement is not enforceable as it was not completed in accordance with the *Act* and *Regulation*. Instead, I find that Section 44(3) of the *Act* applies as follows:

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I also find evidence before me that the Landlords have advised the Tenants that they do not intend to follow the law until the Tenants sign a new tenancy agreement. However, as stated, the tenancy continues on a month-to-month basis and the Tenants are not required to move out, pay a rent increase issued without following the proper process, or sign a new tenancy agreement.

As the parties entered into a tenancy agreement together, both parties are required to follow the tenancy legislation and the Landlords do not get to choose not to do so. Section 5 of the *Act* states the following:

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Therefore, I order the Landlords to comply with the *Act* and *Regulation*, as well as the terms of the tenancy agreement.

As the Tenants were successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenants may deduct \$100.00 from their next monthly rent payment as satisfaction of this amount.

Conclusion

The rent has not been increased in accordance with the *Act*. The rent remains \$4,300.00 per month as per the tenancy agreement.

The Landlords are ordered to comply with the *Act*, *Regulation*, and terms of the tenancy agreement.

The vacate clause on the tenancy agreement is not enforceable. As the initial fixed term tenancy ended on July 31, 2019, the tenancy continues on a month-to-month basis.

Pursuant to Section 72 of the *Act* the Tenants may deduct \$100.00 from their next monthly rent payment as recovery of the filing fee paid for the Application for Dispute Resolution.

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 27, 2019

Residential Tenancy Branch