Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, LRE, OLC, RP, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"):

- To cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice");
- To dispute a rent increase;
- To suspend or restrict the Landlord's right to enter;
- For order the Landlord to comply with the legislation and the tenancy agreement;
- For regular repairs; and
- For recovery of the $100.00 Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties early in the hearing that pursuant to Rule 7.4, if they wanted me to consider their written evidence submitted to the RTB and served on each other, they must present it to me or point it out in the hearing.

At the start of the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the Tenant indicated several matters of dispute on his Application, the most urgent of which is the application to set aside a 10 Day Notice. I advised the Parties that I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. Therefore, as I said in the hearing, I only considered the validity of the rent increase, the Tenant's request to set aside the 10 Day Notice, and the recovery of the Application filing fee at this proceeding. The other claims are severed from the Application and dismissed, with leave to re-apply, depending on the outcome of this hearing.

Issue(s) to be Decided

- Is the 10 Day Notice valid, or should it be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the fixed term tenancy began on June 1, 2018, with a monthly rent of $2,200.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $1,100.00, and no pet damage deposit. The Parties agreed that electricity is included in the monthly rent, according to the tenancy agreement.

The Parties agreed that the Landlord served the Tenant with a three-month notice of rent increase notice on March 29, 2019, which was effective July 1, 2019. On the rent increase notice submitted into evidence by the Landlord, it states:

Amount of Rent Increase:

The current rent is:	$2,200.00	
The rent increase is:	$ 55.00	
+100.00 Extra toward Extra [electricity] cost per month	+100.00	For a total of 2,355.00 per month

The Landlord acknowledged that the allowable rent increase in 2019 is 2.5% of the

current rent or $55.00 in this case. She said she does not consider the $100.00 extra for electricity to be part of the rent increase, but an extra agreement the Parties discussed in texts back and forth. The Landlord said the text messages indicate that the Tenant agreed to the rent increase in writing. The Landlord also noted that the Tenant had paid extra for electricity on request in 2018.

The Tenant said he is a professional poker player and that he uses the internet a lot for this. He said he thought he might be contributing to a higher electricity bill with this usage. However, he also said that the residential property has another rental unit and that the electricity meter is not divided between the two units, but is one meter for the whole residential property. The Tenant also said that the other tenants had complained about the dryer, saying that they had to run it for three cycles to get their clothes dry. The Tenant said this dryer usage could have contributed to the higher electricity bill.

The Landlord said that she had the dryer serviced and that the repair person said there was nothing wrong with it. The Landlord also said there is a new tenant in that unit who has said there is nothing wrong with the dryer

The Tenant said that the other tenants were new to the residential property within his tenancy, and that the Landlord was basing a previous electricity bill on other people altogether; therefore, he said it was not a good basis for attributing the increased rate to him.

The Tenant also said that he was away from the rental unit for months in 2019, therefore, an increase in electricity cost would not have been because of his internet usage. The Tenant said: “I was in Vancouver, Montreal, and Europe for months; I wasn’t home using the internet for four months.”

The Tenant said he paid the allowable rent increase, but not the extra $100.00 per month for electricity. The Parties agreed that the Landlord served the Tenant with the 10 Day Notice dated September 24, 2019, because they were not paying the full rent increase that the Landlord imposed.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Rent Increase

Policy Guideline 37 ("PG #37") addresses rent increases permitted under the Act. PG #37 states that a tenant's rent cannot be increased unless a tenant has been given proper notice in the approved form (RTB form #7), at least three months before the increase is to take effect. A tenant's rent can only be increased once every 12 months. This is consistent with Part 3 of the Act, including section 43(1), which states that 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.

In regard to what constitutes "in writing", I find that the Act does not contemplate that a text is an example of a "written" agreement or communication. Therefore, I disregard any apparent text agreement that the Tenant may have made to the $100.00 monthly rent increase for electricity use.

PG #37 also says: "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."

As set out in section 6 of the Schedule to the Regulation:

> (3) The landlord may increase the rent only in the amount set out by the regulation. If the tenant thinks the rent increase is more than is allowed by the regulation, the tenant may talk to the landlord or contact the Residential Tenancy office for assistance.

The allowable rent increase for 2019 is 2.5%. The Landlord was allowed to increase the rent in 2019 by 2.5% of $2,200.00 or $55.00 per month to $2,255.00. The Landlord included a monthly fee of $100.00 on the Notice of Rent Increase, yet she asserts that it is not part of the rent increase, but an amount the Parties agreed on for electricity.

The *Residential Tenancy Act* Regulation sets out the allowable fees that can be charged by a landlord:

> **Non-refundable fees charged by landlord**
>
> **7** (1) A landlord may charge any of the following non-refundable fees:
>
> (a) direct cost of replacing keys or other access devices;

(b) direct cost of additional keys or other access devices requested by the tenant;

(c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

(d) subject to subsection (2), an administration fee of not more than $25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(e) subject to subsection (2), a fee that does not exceed the greater of $15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;

(f) a move-in or move-out fee charged by a strata corporation to the landlord;

(g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

In this case, the Landlord has tried to bill the Tenants for electricity use on a monthly basis, even though the tenancy agreement says this is included in the rent. I find that the Regulation does not cover this additional fee imposed by the Landlord. I find that the additional $100.00 set out on the Notice of Rent Increase equates to an attempted increase in the rent beyond what is allowed by the legislation. I find that, when the Landlord increased the rent to $2,355.00, she overcharged the Tenant by $100.00 a month from July 2019 to the present, without his written agreement.

There are additional factors that cause me to question the legality of the extra $100.00 increase in the monthly fee (or rent) imposed by the Landlord. First, the tenancy agreement signed by the Parties says that electricity is included in the rent paid. If the Landlord found that she was paying more for the electricity at the residential property, it is her responsibility, because she decided to include it in the rent. The Parties may have texted about the cost of electricity, but they did not amend the tenancy agreement in writing to change this aspect of the tenancy.

In addition, as the Tenant pointed out, the Landlord was basing the increase in the cost of electricity on the Tenant, even though the electricity meter applies to the usage for both rental units. The Tenant gave evidence about the other tenants' usage of the dryer, which could conceivably have affected the electricity bill. The Landlord said nothing was

wrong with the dryer. However, the other tenants may have overloaded the dryer, which led them to need to use three cycles to dry their clothes. Regardless, the evidence before me is that they were using the dryer more than they thought was necessary. I find that this was a potential cause of the increased electricity bill.

Further, the evidence before me is that the Tenant was away from the rental unit for months at a time, which detracts from the reasonableness of blaming him for the increased electricity usage.

In addition, the fact that the Landlord served the Tenant with an eviction notice for not paying the rent, indicates that the Landlord believed the increased amount was, in fact, rent and not merely for electricity usage.

Based on all the evidence before me overall, I find that the $155.00 increase on the Notice of Rent Increase was solely a rent increase. I find that the Landlord increased the rent beyond what is allowed by the Regulation. As a result, I find that the rent increase was invalid, and I cancel it.

Section 43(5) of the Act states:

> **43** (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.

Based on the above, I find that the Landlord's rent increase to the Tenants was contrary to the Act, Regulation and Policy Guidelines; accordingly, there was no rent increase, so the Landlord overcharged the Tenants by $100.00 per month.

10 Day Notice

When the Tenant refused to pay the additional $100.00, I find it did not amount to failing to pay the rent. Accordingly, I find that the Landlord did not have grounds to serve the 10 Day Notice on the Tenant, and therefore, I find that the 10 Day Notice is invalid, and I cancel it, pursuant to section 46. I find that the tenancy will continue until ended in accordance with the legislation.

Further, I order that the Tenants' rent is $2,200.00 per month from this date forward, until it is increased in accordance with the Act, Regulation and Policy Guidelines.

The Tenant did not apply for a monetary order for damage or compensation under the Act, therefore, I cannot award him recovery of any rent that was paid toward the illegal rent increase. I make no finding in this regard and it is open to the Tenant to apply for dispute resolution for recovery of any excess amount paid to the Landlord.

Given the Tenant's success in this Application, I award him with recovery of the $100.00 Application filing fee. The Tenant is authorized to reduce one upcoming rent payment to the Landlord by $100.00 in satisfaction of this award.

Conclusion

The Tenant is successful in his Application to dispute the rent increase and to cancel the 10 Day Notice. The Tenant's other claims are dismissed with leave to reapply.

The rent increase imposed by the Landlord in July 2019 is cancelled and the rent is returned to $2,200.00, until increased in accordance with the legislation and Policy Guidelines.

The 10 Day Notice is cancelled and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

The Tenant is awarded recovery of the $100.00 Application filing fee and is authorized to deduct this amount from one upcoming rent payment to the Landlord, in satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 10, 2019

Residential Tenancy Branch