



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT, OLC

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on April 9, 2019, wherein the Tenant sought the following relief:

- an Order cancelling a Notice to End Tenancy for Cause issued on April 3, 2019 (the "Notice");
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulations*, and the residential tenancy agreement; and,
- to recover the filing fee.

The hearing originally convened on May 16, 2019. By Decision dated May 17, 2019, the Landlord was granted an order of Possession based on the Notice.

The Tenant applied for and was granted Review Consideration of the May 17, 2019 Decision and Order. By Decision dated May 28, 2019, the May 17, 2019 Decision and Orders were suspended pending a Review/New hearing.

The Review Hearing was scheduled for teleconference before me at 11:00 a.m. on July 9, 2019. Both the Landlord, as well as the Tenant, P.L. and her advocate J.A. called into the hearing. The hearing on July 9, 2019 did not complete and was adjourned to September 19, 2019. At that time both parties as well as the Tenants' Advocate were in attendance. The parties were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

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.

By Interim Decision dated July 10, 2019, I canceled the Notice. This Decision must be read in conjunction with that Interim Decision.

### Issues to be Decided

1. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulations*, or the residential tenancy agreement?
2. Should the Tenant recover the filing fee?

### Background and Evidence

Introduced in evidence was a summary prepared by the Tenant's Advocate in which the following was noted:

- The Tenant, P.L., and her mother, K.H., moved into the rental unit on July 1, 2013 and paid monthly rent of \$780.00. They also paid a security and pet deposit of \$490.00. The Landlords at the time were J.G. and S.G.
- On June 25, 2015 the Tenants were served a 2 Month Notice to End Tenancy for Landlord's Use as the rental home had been sold. The Tenants applied to dispute the Notice.
- On July 9, 2019 the Landlords who are the respondents in the case before me, R.B. and H.B. took possession of the rental unit. The Landlords informed the Tenants that they would not have to move if they agreed to pay \$850.00 per month in rent. The Landlords stated that they would evict the Tenants if they did not pay the \$850.00. The Tenants paid the \$850.00 believing that this would be resolved at the upcoming hearing.
- The hearing of the Tenants application to dispute the 2 Month Notice occurred on September 2, 2015. The Landlords did not attend and the Notice was cancelled.

- The Landlords threatened the Tenants that if they did not pay the \$850.00 they would be evicted; the Tenants paid the increased rent despite the fact it was an illegal rent increase.
- On April 21, 2016 the Landlord completed an "Intent to Rent" form.
- On August 15, 2016 the Landlords served a Notice of Rent Increase from \$850.00 to \$950.00.
- The Tenants disputed the rent increase and were successful at the hearing such that their rent remained \$850.00.
- Unbeknownst to the Tenants, the Landlord, R.B., contacted the Public Trustee and informed them that the Tenants portion of the rent had increased to \$475.00. The Public Trustee was unaware the Tenants had successfully disputed the rent increase. The case manager began paying the increased rent for KH as of September 1, 2016 such that K.H.'s portion was \$475.00 and P.L.'s portion of \$425.00 for a total payment of \$900.00 per month.
- In December of 2018 the Landlord informed the Tenant P.L. that he and his wife were separating and he would be the sole Landlord. He asked her to sign "something" to confirm her tenancy with respect to his mortgage application .
- On April 4, 2019 the Tenant found a 1 Month Notice to End Tenancy for Cause taped to her door. This Notice claimed the Tenant was repeatedly late paying her rent.
- The Tenant obtained advice from her local MLA's office and filed an online application to dispute the notice. The Tenants also obtained the assistance of an Advocate.
- At the hearing on May 16, 2019 the Landlord claimed to have served his evidence on the Tenants by posting to the rental unit door on May 3, 2019. This was disputed by the Tenants.
- In terms of the Tenants' request that the Landlord comply, the Tenants allege they have repeatedly requested rent receipts for cash paid. The Tenants further allege the Landlord has refused this request. To prove that the Tenants were not repeatedly late paying rent the Tenant, P.L., submitted copies of her bank statements to show withdrawals corresponding with her rent payment.
- At the hearing on May 16, 2019 the Landlord stated that rent was \$1,000.00 per month based on a new tenancy agreement which he alleges was signed by the Tenants on December 2018. Neither the Tenants, nor the Public Trustee have ever seen this document.

At the hearing on July 9, 2019 the Tenant confirmed the contents of the above summary as true to the best of her knowledge.

The Tenant also confirmed that she has been paying rent in the amount of \$425.00 per month and that her mother has been paying \$475.00. The Tenant further testified that when the Landlord and his spouse separated, he asked her to sign a document confirming she was a tenant. She claimed that she was only provided a signature page and did not receive or review the entire agreement. The new tenancy agreement provides that monthly rent is \$1,000.00. The Tenant denied that rent has ever been \$1,000.00.

The Tenants request an Order that the December 2018 tenancy agreement be found to be invalid.

During the hearing on July 9, 2019 the Landlord testified that monthly rent was \$1,000.00.

At the continuation of the hearing the Tenants' Advocate stated that issues had arisen since the last hearing, specifically that the Landlord has listed the property for sale, had not given the Tenants proper notice of showings and had entered the rental unit daily to show the rental unit to prospective buyers. These claims were disputed by the Landlord.

As the parties were informed, these issues arose since the Tenants applied for Dispute Resolution and were not properly before me such that I make no findings of fact or law with respect to the Tenants' allegations.

When the hearing reconvened on September 19, 2019 and the Landlord was offered an opportunity to respond to the Tenants' submissions he stated that he just wanted to resolve matters, and that he was happy to receive whatever the Tenants want to pay in rent. When I asked him to clarify this, he stated that one Tenant paid \$425.00 and the other paid \$475.00. I informed the Landlord that the rent increase to \$950.00 had been found to be invalid such that the \$50.00 extra he received from the trustee was not permitted. He then stated that the Tenants agreed to pay \$900.00 and he was agreeable to receiving that. When I asked him whether he had any documentary evidence to confirm that they agreed to pay \$900.00 per month, he stated that one paid \$425.00 and the other paid \$475.00 for a total of \$900.00.

The Landlord then stated that he was agreeable to whatever the Tenants want to pay. He then stated repeatedly "do what you like" in terms of making my Decision. When I reminded him the Tenants were seeking to pay the original amount of rent and asked

him to confirm that he was not opposing the Tenants' requests, he confirmed this and stated that he simply wanted to sell the property.

### Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

The Tenants seek an Order that the Landlord comply with the with the *Residential Tenancy Act*, the *Regulations*, and the residential tenancy agreement. In submissions provided by the Tenants' advocate, the Tenants further particularize their claim as relating to the payment of rent.

Although the Landlord initially opposed the Tenants' request, at the hearing before me on September 19, 2019 he confirmed he was in agreement with "whatever they wanted".

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*") which 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:

percentage amount = 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:

percentage amount = 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 rent was initially \$780.00 per month. The evidence indicates the current Landlord took over ownership of the property, he requested that the rent increase to \$850.00. He did not issue a Notice of Rent Increase at that time, nor did he give the Tenants the required three months' notice. I accept the Tenant's evidence that they paid the requested amount as they were fearful of being evicted. I further accept the Tenants' evidence that he did not provide them with a complete copy of the tenancy agreement, and as such, I find the tenancy agreement to be of no force and effect.

Although the Landlord subsequently issued a Notice of Rent Increase, that notice was found to be invalid at a hearing before the Branch.

As a result of the foregoing **I find that the rent payable by the Tenants is \$780.00 per month.** I further find that as the Landlord has not issued a valid rent increase, he is at liberty to do so at any time, provided that the Notice complies with Part 3 of the *Act* and Part 4 of the *Regulations*.

**Pursuant to sections 26(2) and 62(3) I order the Landlord to provide receipts for any cash payments.**

The Tenants failed to request monetary compensation from the Landlord on their Application. *Rule 2.2 of the Residential Tenancy Branch Rules of Procedure* provides that a claim is limited to what is stated on the Application. As such, I find that **the Tenants are at liberty to apply for monetary compensation for rent paid over and above the \$780.00.**

**As the Tenants have been substantially successful I find they are entitled to recover the \$100.00 filing fee. Pursuant to section 72 I authorize the Tenants to withhold \$100.00 from their next rent payment.**

The parties were reminded of the requirements of section 29 of the *Act*, as well as the Landlord's obligation to issue a 2 Month notice to end tenancy for Landlord's use in the event the new buyers wish to occupy the rental unit.

As requested by the Landlord, I reproduce section 29 as follows:

**Landlord's right to enter rental unit restricted**

**29** (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i)the purpose for entering, which must be reasonable;

(ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d)the landlord has an order of the director authorizing the entry;

(e)the tenant has abandoned the rental unit;

(f)an emergency exists and the entry is necessary to protect life or property.



(2)A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

### Conclusion

The May 17, 2019 Decision and Orders are hereby set aside.

The Pursuant to my Interim Decision of July 10, 2019, the Tenants' request for an order canceling the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Tenants' request for an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulations* and the residential tenancy agreement is granted. To this end I find that monthly rent is payable in the amount of \$780.00. I also order that the Landlord provide receipts for any cash payments.

The Tenants are at liberty to apply for monetary compensation for any amounts of rent paid over and above the \$780.00.

The Tenants' request for recovery of the filing fee is granted. They may reduce their next month's rent by \$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: October 4, 2019

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Residential Tenancy Branch