



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding 608584 BC LTD & WHISTLER PROPERTY SERVICES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, DRI, RR, FFT

Introduction

On October 24, 2019, the Tenants applied for dispute resolution under the *Residential Tenancy Act* ("the Act") seeking the following relief:

- for an order for the Landlord to make repairs to the rental unit.
- to dispute an illegal rent increase.
- to allow the Tenant to deduct the cost of repairs, services or facilities from the rent.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. The Tenants and the Landlord's agent ("the Landlord") were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The agent for the Landlord submitted that he believes his company name "WPS" is incorrectly named in the Tenant's application.

The agent was asked whether or not he performed duties under the Act or the tenancy agreement with respect to this tenancy, and he replied yes.

The definition of Landlord in the Act is as follows: "landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
- (i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

I find that Mr. D.K. acted on behalf of the owner of the property and performed duties under the Act and tenancy agreement. Mr. D.K. testified that "WPS" is his property management company. I find that "WPS" is properly named as a Landlord in the Tenants application.

Issues to be Decided

- Are the Tenants entitled to an order that the Landlord make repairs to the unit?
- Are the Tenants entitled to compensation due to an illegal rent increase?
- Are the Tenants entitled to deduct the cost of repairs, services or facilities from the rent?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on August 1, 2018 as a two-year fixed term tenancy. Rent in the amount of \$4,000.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$2,000.00 and a pet damage deposit of \$2,000.00. The tenancy agreement includes a two page addendum.

Illegal Rent Increase

The Tenants testified that the Landlord increased the monthly rent by an additional \$100.00 per month without issuing the proper notice required under the Act. The Tenants testified that they paid an additional \$100.00 for five months (August to December). The Tenants are seeking to recover the illegal rent increase payments of \$500.00 and receive a decision that they do not have to pay a rent increase until the Landlord issues a proper notice of rent increase.

In response, the Landlord provided testimony confirming that the Landlord did not issue a notice of rent increase form. The Landlord testified that there was an understanding between the parties that there would be a rent increase at the government prescribed amount. The Landlord submitted that the Tenants are relying on a technicality because the Landlord did not issue a notice.

Rent Reduction

The Tenants are seeking compensation for a reduction of value in the tenancy due to the Landlords failure to comply with the tenancy agreement to provide new blinds for the bedroom of the unit. The Tenants submitted that the tenancy agreement addendum contains a term that the Landlord agrees to

replace old and failed blinds in the lower master bedroom and in the dining room. The Tenants testified that there were broken down blinds on the windows.

The Tenants testified that they called the Landlord on numerous occasions asking for the blinds to be provided. The Tenants testified that they contacted the Landlord in August 2018; February 2019; and September 2019 about the blinds. The Tenants testified that they sent the measurements to the Landlord on August 9, 2018.

The Tenants are seeking compensation of \$700.00 which amounts to \$50.00 each month for the past 14 months that the Tenants have not had new blinds as agreed upon in the tenancy agreement.

In reply, the Landlord testified that there are blinds on the windows that work and do not affect any heat loss.

The Landlords recollection is that the Tenant first contacted him about having the blinds replaced in February 2019. The Landlord testified that a retail store was paid for new blinds in March 2019. The Landlord testified that the contractor hired by the retail store did not follow through with the work order. The Landlord testified that the owner has been good about spending money to maintain the rental unit.

Repairs

The Tenants are seeking an order for the Landlord to comply with the tenancy agreement requiring the Landlord to provide the new window blinds for the rental unit.

The Tenants testified that someone attended the rental unit last week to measure the windows.

The Landlord testified that the custom blinds are currently being produced and it will take three weeks to a month for the installation.

Overpayment of Security Deposit

The Tenants testified that the Landlord demanded an additional \$100.00 security deposit in August 2019. The Tenants testified that they paid the Landlord \$100.00.

In reply, the Landlord testified that he made an error by charging an additional \$100.00 for the security deposit. The Landlord stated that he has not repaid the \$100.00.

Analysis

Residential Tenancy Policy Guideline # 37 Rent Increases provides the following information:

A tenant's rent cannot be increased unless the tenant has been given proper notice in the approved form at least three months before the increase is to take effect. The tenant's rent can only be increased once every 12 months.

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator.

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.

Section 41 of the Act provides that a landlord must not increase rent except in accordance with this Part.

Section 42 (1) of the Act provides that 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) provides that 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.

Section 43 (5) of the Act provides that 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.

Section 65 of the Act states that if the director finds that a Landlord or Tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Section 20 of the Act provides that a Landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
- (b) require or accept more than one security deposit in respect of a tenancy agreement;
- (c) require a pet damage deposit at any time other than
 - (i) when the landlord and tenant enter into the tenancy agreement, or
 - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
- (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;
- (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Illegal Rent Increase

I find that the Landlord increased the rent without issuing the required Notice of Rent Increase as required under section 42(3) of the Act. The Tenants payment of the \$100.00 increase does not constitute agreement of the rent increase. In accordance with section 43(5) of the Act the Tenants may deduct the increase from rent or otherwise recover the increase. The Tenants are not required to pay the \$100.00 increase.

I award the Tenants the amount of \$500.00.

Rent Reduction

I find that the tenancy agreement addendum was signed by the parties on July 26, 2018 and contains a condition that the Landlord agrees to replace old and failed blinds in the lower master bedroom and in the dining room. I find that the tenancy began 17 months ago, and the Landlord has not replaced the blinds. I find that there has been a reduction of value in the tenancy. The Tenants have not received the benefit of new blinds which they pay rent for.

I find that the amount claimed of \$50.00 each month is a reasonable amount of compensation for the Tenants loss. The amount of \$50.00 each month is 1.25% of the \$4,000.00 monthly rent. I award the Tenants \$50.00 each month for the past 14 months that the Tenants were not provided with new blinds. I award the Tenants the amount claimed of \$700.00.

Repair Order

I find that the Landlord has not replaced old and failed blinds in the lower master bedroom and in the dining room as provided in the tenancy agreement.

I order the Landlord to complete the replacement of the blinds by January 15, 2020. If the Landlord fails to have the blinds replaced beyond January 15, 2020, the Tenants may apply for further compensation.

Overpayment of Security Deposit

The Landlord acknowledged that he made an error by charging the Tenants an additional \$100.00 security deposit.

I award the Tenants the amount of \$100.00 for an overpayment of a security deposit.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful with the application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

The Tenants have established a monetary claim against the Landlord in the amount of \$1,400.00 for an illegal rent increase; a loss of value in the tenancy; an overpayment of a security deposit; and the cost of the filing fee.

The Tenants are awarded monetary compensation in the amount of \$1,400.00. I authorize the Tenants to deduct the amount of \$1,400.00 from one (1) future rent payment.

Conclusion

The Tenants application was successful. I order the Landlord to complete the replacement of the blinds no later than January 15, 2020.

I authorize the Tenants to deduct the amount of \$1,400.00 from one (1) future rent payment.

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: December 24, 2019

Residential Tenancy Branch