



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 03, 2019 (the “Application”). The Tenant applied to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”). The Tenant also sought to dispute a rent increase that is above the amount allowed by law.

The Tenant appeared at the hearing with M.K. and J.A. to assist. The Landlord appeared at the hearing with J.P. to assist. I explained the hearing process to the parties who did not have questions when asked. The Tenant, Landlord, M.K. and J.P. provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and Tenant’s evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Has the Landlord imposed a rent increase that is above the amount allowed by law?

Background and Evidence

The parties agreed there is a tenancy agreement between the Landlord and Tenant in relation to the rental unit. Both agreed the tenancy started September 03, 2016 and is a month-to-month tenancy. Both agreed rent is currently \$850.00 per month due on the first day of each month.

Notice

The Notice was submitted. The grounds for the Notice are that the rental unit will be occupied by the Landlord or the Landlord's close family member. It has an effective date of January 31, 2020.

The Landlord signed the Notice but did not date it in the space provided. M.K. raised this as an issue in relation to the validity of the Notice. J.P. acknowledged that this was negligent on the Landlord's part. J.P. pointed out the date is on the top left-hand corner. In reply, M.K. said he could not see a date on the Notice. M.K. acknowledged the date after the location of it was pointed out to him.

The parties agreed the Notice was served on the Tenant in person November 25, 2019.

In relation to the grounds for the Notice, J.P. testified that him, his wife, their four children, the Landlord and his wife live in the upper unit at the rental unit address. J.P. testified that the children are 18, 15, 10 and two years old. J.P. testified that the upper unit has four bedrooms and that they need the rental unit for their family which has grown over the last two years. J.P. testified that the upper unit is too small for the family. J.P. testified that the lower unit has two bedrooms.

M.K., on behalf of the Tenant, made the following submissions. The Landlord has not submitted evidence to support the Notice or that the family needs the rental unit. There has been a pattern of illegal rent increases. The Tenant was served the Notice after he told the Landlord he would not pay the latest rent increase. The Notice is not about the family needing space.

The Tenant testified as follows. The last Notice of Rent Increase was served on him in November. The Landlord spoke to him about paying an additional \$100.00 in rent in November. He told the Landlord he wanted proper written notice and three months notice. The Landlord did not want to wait three months for the rent increase. A few

days later, J.P. served him with the Notice. The Landlord and J.P. have gone back and forth about whether he has to vacate or if he can stay if he pays the additional \$100.00 in rent.

In reply, J.P. testified that the discussion about the latest rent increase began in September. He testified that the Tenant said he would pay the rent increase but was waiting the three months. J.P. agreed the latest Notice of Rent increase was given at the beginning of November.

The Landlord, through J.P., testified as follows. He went down and spoke to the Tenant about the latest rent increase in November and the Tenant said he would pay the increase but needed time because of the time of year. He agreed the Tenant told him he wanted the rent increase in writing. After giving the Tenant the Notice of Rent Increase, there was an argument between the children living upstairs and they decided it was time they gave the Notice.

Rent Increase

The Tenant disputed a Notice of Rent Increase issued in 2018 and a Notice of Rent Increase issued in 2019. The Tenant disputed the amount of the rent increases which M.K. submitted do not comply with the allowable amounts for 2018 and 2019.

The Tenant testified that he received the first Notice of Rent Increase at the end of October 2017. He testified that he paid the rent increase starting February 2018.

The Tenant testified that he received the second Notice of Rent Increase in November of 2019. He said he paid the increase for December but not January.

I asked why the Tenant waited so long to dispute the rent increases. M.K. and the Tenant said the Tenant did not know his rights.

The Tenant submitted the Notices of Rent Increase from 2018 and 2019.

J.P. testified that the first Notice of Rent Increase was served on the Tenant in the first week of October 2017. J.P. agreed the Tenant started paying the rent increase in February 2018.

J.P. testified that he believes the second Notice of Rent Increase was served at the beginning of November but is not sure.

In relation to the amount of the rent increases, J.P. testified that the rent is lower than the rental market rates in the area. He testified that there was a discussion with the Tenant when he was brought to the Landlord to rent the rental unit that the rent would be low to start and change over time. J.P. acknowledged the Landlord had not applied to the RTB in relation to an additional rent increase.

Analysis

Notice

The Notice was issued under section 49(3) of the *Residential Tenancy Act* (the “Act”) which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. (emphasis added)

Pursuant to section 49(8)(a) of the *Act*, the Tenant had 15 days to dispute the Notice. There is no issue the Tenant received the Notice November 25, 2019. The Tenant filed the Application December 03, 2019, within the 15-day time limit.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord who has the onus to prove the grounds for the Notice.

Policy Guideline 2A deals with ending a tenancy pursuant to section 49(3) of the *Act* and states in part:

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the

tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement...

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive.

(emphasis added)

Further, section 52 of the *Act* states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice...

(e) when given by a landlord, be in the approved form.

I am not satisfied the Notice is valid for two reasons.

First, I find the Notice does not comply with section 52 of the *Act* as the Landlord did not date the Notice in the proper box on the RTB form.

Second, I am satisfied based on the testimony of both parties that the latest Notice of Rent Increase was served on the Tenant in November, prior to the Notice being issued. I am satisfied based on the testimony of both parties that the Tenant made some objection to the latest Notice of Rent Increase. The timing of the Notice raises concerns given it was served soon after the Tenant took issue with the latest Notice of Rent Increase. Further, J.P. raised issues about the rent amount being lower than the rental market rates in the area. There is sufficient evidence before me to raise a concern about the Notice being issued for an ulterior motive. I have considered whether the Landlord provided sufficient evidence to prove there is no ulterior motive. I am not satisfied the testimony of J.P. and the Landlord alone is sufficient to prove there is no ulterior motive in the circumstances. I therefore am not satisfied the Landlord has proven that the good faith requirement has been met. I therefore cancel the Notice. The tenancy will continue until ended in accordance with the *Act*.

Rent Increase

Part 3 of the *Act* addresses rent increases and states:

41 A landlord must not increase rent except in accordance with this Part.

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.

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...

(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.

Policy Guideline 37 addresses rent increases and states in part:

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. If

the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

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.

(emphasis added)

The allowable rent increase amount is available on the RTB website. The amount was a 4.0% increase for 2018 and 2.5% increase for 2019.

Based on the Notices of Rent Increase submitted, I find the following. Rent was \$650.00 at the start of the tenancy. Rent was increased by \$100.00 to \$750.00 effective January 23, 2018. Rent was increased by \$100.00 to \$850.00 effective November 01, 2019.

The \$100.00 rent increases do not comply with the maximum allowable rent increases for 2018 and 2019. I find the Landlord failed to comply with section 43(1) of the *Act* as the rent increases exceed the amount calculated in accordance with the regulations, the Landlord did not have an order from the RTB allowing this and the Tenant did not agree in writing to these increases. I find the rent increases contravene the *Act* and therefore are not valid rent increases. The rent amount will revert to \$650.00, the rent amount prior to the first Notice of Rent Increase. The Tenant can deduct the amount of rent paid over \$650.00 for December of 2019 and January of 2020 pursuant to section 43(5) of the *Act*. This amount can be deducted from one future rent payment.

I have considered whether the Tenant should be permitted to deduct further amounts from rent due to the illegal rent increases. I decline to allow this for two reasons. First, the Tenant did not specifically ask for this in the Application. Second, I find the Tenant bears some responsibility for this situation as both parties are expected to know their

rights and obligations under the *Act*. The Tenant should have been aware of his rights and disputed the first rent increase back in 2017 when it was issued.

In summary, the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*. The rent will now be \$650.00 per month. If the Landlord wishes to increase the rent amount, the Landlord must issue a new notice that complies with Part 3 of the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*. The rent will now be \$650.00 per month until such time as the Landlord issues a notice to increase the rent that complies with Part 3 of the *Act*. The Tenant can deduct the amount of rent paid over \$650.00 for December of 2019 and January of 2020 from one 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 *Act*.

Dated: January 28, 2020

Residential Tenancy Branch