



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, FFT

Introduction

This hearing dealt with the **tenant**'s application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The **tenant** testified, and the **landlord** confirmed, that the **tenant** served the **landlord** with the notice of dispute resolution form and supporting evidence package. The **landlord** testified, and the **tenant** confirmed, that the **landlord** served the **tenant** with his evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the tenant entitled to:

- 1) the cancelation of the Notice;
- 2) the cancelation of the rent increase; and
- 3) recover her filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

1. History of Rental Agreements

The tenant has resided at the rental property for 17 years. The parties have entered into a series of fixed-term tenancy agreements during this time. Four of such agreement were entered into evidence by the tenant. No evidence was given as to whether other fixed-term agreements exist to cover to the gaps between the agreements listed below.

On November 12, 2002, the parties entered into a written, fixed-term tenancy agreement starting December 1, 2002 and ending November 1, 2015. Monthly rent was \$750 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$375. The landlord still retains this deposit.

On September 25, 2011, the parties entered into a written, fixed-term tenancy agreement starting October 1, 2011 and ending September 30, 2014. Monthly rent was \$825 and was payable on the first of each month.

On July 15, 2016, the parties entered into a written, fixed-term tenancy agreement starting October 1, 2016 and ending September 30, 2019. Monthly rent was \$875 and was payable on the first of each month.

On June 11, 2019, the parties entered into a written, fixed-term tenancy agreement starting October 1, 2019 and ending September 30, 2021. Monthly rent was \$1,000 and was payable on the first of each month. The tenant says that this agreement (the "**2019 Agreement**") was later verbally amended by the parties to reduce the rent to \$925. The landlord denies this.

2. Formation of the 2019 Agreement

The tenant testified that the landlord attended the rental unit on June 11, 2019 with the goal of entering into 2019 Agreement. She testified (and the landlord agreed) that the landlord initially asked that the monthly rent be increased to \$1,050. The tenant testified (and the landlord agreed) that she told the landlord that she could not afford that amount. The parties agreed on the amount of \$1,000 for monthly rent, and both signed

the 2019 Agreement. The tenant testified that she did not feel that she had a choice when signing it. She testified that, at the time of signing the 2019 Agreement, she was unaware of any rules regarding the permissible amount of a rent increase.

The tenant testified that shortly thereafter, she spoke to her daughter, who told her that an increase in monthly rent of \$125 (representing a roughly 14% increase) was not permitted under the Act.

The tenant testified that she then called the landlord and advised him of this. She testified that he agreed to amend the 2019 Agreement so that she could pay \$925 in monthly rent (the “**Amended Agreement**”). She testified that he told her that he didn’t need to sign anything to document this change, as the parties “were friends” and trusted each other.

The tenant testified she changed the amount of monthly rent due on her copy of the 2019 Agreement to reflect this discussion.

The landlord testified that he did not agree the tenant could reduce the monthly rent to \$925. He testified that on the phone call with the tenant he was open to negotiation to amend the 2019 Agreement, but that the tenant “shut this down” by only wanting to communicate via email.

3. The Notice

The parties agree that the tenant made a rent payment of \$925 on October 1, 2019. They agree that the tenant has paid \$925 in monthly rent for the months of November and December 2019, and January 2020. The landlord testified that the tenant is \$300 in rental arrears.

On November 4, 2019, the landlord served the Notice on the tenant by registered mail. The tenant confirmed receipt of it. The Notice states that the tenant failed to pay \$1,000 in monthly rent which was due on October 1, 2019.

The tenant testified that she was confused by this, as she had paid \$925 in monthly rent on October 1, 2019, pursuant to her understanding of the terms of the 2019 Agreement.

4. Parties’ Positions

a. Tenant's Position

The tenant's position is twofold. First, she argues that the parties agreed that monthly rent should be \$925, pursuant to the Amended Agreement. As such, she says, she is not in rental arrears at all, and the Notice should be cancelled.

In the alternative, she argued that the landlord violated the Act by increasing monthly rent from \$875 to \$1,000. As such, such an increase should be struck down. She testified that, notwithstanding whatever the amount of rent increase permitted by the Act, she agrees to pay \$925 in monthly rent.

b. Landlord's Position

The landlord takes the position that the 2019 Agreement is valid. He argued it provided the tenant with more than three months' notice of the rent increase, as required by the Act, and that the tenant signed it, indicating her acceptance.

As such, he argues, the Notice was validly issued, as the tenant is in rental arrears.

The landlord testified that he did not increase the monthly rent throughout the duration of the tenancy as much as he was permitted to. He also testified that he is renting the rental unit out to the tenant at a loss. He testified that his expenses associated with the rental unit are \$1,157.25 per month. He testified that he is retired, and that the rental property is supposed to be a "pension supplement" and not the "pension deficient" that it is now. He testified that if he is not permitted to increase the monthly rent to \$1,000, he may have to sell the rental unit.

The landlord did not deny that the rental increase is in excess of the amount permitted by the Act. Rather, he argued that it is necessary for him to be able to afford to keep the rental unit. The landlord testified that he has not made an application to increase the monthly rent beyond the amount proscribed by the *Residential Tenancy Regulations*.

Analysis

Policy Guideline 30 considers the permissibility of rent increases when a fixed-term tenancy is renewed. It states:

D. RENEWING A FIXED TERM TENANCY AGREEMENT

A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms. Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent increases are met.

[emphasis added]

Section 42 of the Act sets out the timing and notice requirements for rent increases:

Timing and notice of rent increases

42(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.

Section 43 of the Act address the permissible amount of rent increases. It states, in part:

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.

[...]

(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.

In 2019, the allowable rent increase was 2.5%. I find that a rent increase of 14% is not permitted by the Act.

I find that the landlord did not provide the tenants with written notice in the approved form of the rent increase three months prior to the rent increase taking effect, or at all. However, I find that, by signing the 2019 Agreement, the tenant consent to increase monthly rent from \$875 to \$1,000.

Policy Guideline 37 sets out the circumstances under which a tenant's consent to an increase in monthly rent above the prescribed amount is valid. It states:

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.

[emphasis added]

I find the failure of the landlord to deliver written notice of the proposed rent increase in the approved form to cause the rent increase to be invalid. The approved form of notice of rent increase (Form RTB-7) provides significant information to the tenants regarding their rights under the Act. This information includes:

- A landlord must give a tenant at least 3 whole months' notice, in writing, of a rent increase. For example, if the rent is due on the first day of the month and the tenant is given notice any time in January, even January 1st, there must be 3 whole months before the rent increase begins. In this example, the months are February, March, and April, so the rent increase would begin on May 1st. The landlord must use this form, Notice of Rent Increase, and must serve according to the Residential Tenancy Act.
- It is an offence for a landlord or a landlord's agent to collect a rent increase in any other way other than in accordance with Part 3 of the Residential Tenancy Act. [...]
- A tenant may not apply for dispute resolution to dispute a rent increase that complies with Part 3 of the RTA.
- A landlord may only impose a rent increase up to the amount calculated in accordance with the regulations or as ordered by an arbitrator. If a tenant

believes that the rent increase is more than allowed by the regulations, the tenant may contact the Residential Tenancy Branch for assistance

- For further information on rent increases, see Part 3 of the Residential Tenancy Act and Part 4 of the Residential Tenancy Regulation. You may also call the recorded 24-hour information line or visit the B.C. Government Web site to find out how to contact a Residential Tenancy Branch or to get more information (this information is at the bottom of page 1)

By requiring that the notice of rent increase be delivered to tenants using the approved form, the Act requires that tenants are provided with the above-stated information at the same time they are provided with notice of the rent increase. This information is designed to inform tenants of their rights under the Act and provide them with the information necessary to dispute the rent increase.

In this case, I find that the tenant did not have this information at the time she was made aware of the landlord's intention to raise the rent. As such, I find she was disadvantaged when she agreed to the rent increase and she was not full informed of her rights under the Act.

I find that the approved form is designed to prevent such an imbalance of bargaining power. By failing to provide the notice of rent increase in the approved form, the landlord deprived the tenant of the knowledge she was entitled to. Without such knowledge the tenant could not make an informed decision to consent to a rent increase in excess of the proscribed amount.

While I make no findings as to the landlord's operating expenses of the rental unit, I am not unsympathetic to the dilemma the landlord claims he is facing. However, he was not without recourse to have the rent increased in excess of the proscribed amount (see section 43(3) of the Act and section 23(1) of the Residential Tenancy Regulations). The landlord has not yet availed himself of these provisions, but this avenue remains open to him.

I find that the landlord breached the Act by failing to provide the tenants with notice of the rent increase in the approved form. As such, I find that any rent increase is invalid. However, as the tenant has taken the position that she is willing to pay monthly rent of \$925 (which I note represents a 5.7% increase in monthly rent), I find that the monthly rent is \$925.

As such, I find that the tenant is not in rental arrears, and that the Notice is invalid.

As the tenant has been successful in her application, I find that the landlord must repay her the filing fee of \$100. The tenant may deduct this amount from her next month's rent.

Conclusion

Pursuant to section 46 of the Act, I order that the Notice is cancelled and of no effect.

Pursuant to sections 43 and 65 of the Act, and per the consent of the tenant, I order that monthly rent is \$925.

Pursuant to section 72(2) of the Act, the tenant may deduct \$100, representing the return of filing fee, from her next month's rent.

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: January 2, 2020

Residential Tenancy Branch