



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC

Introduction

In this dispute resolution hearing, the tenant disputed a rent increase pursuant to sections 41 to 43 of the *Residential Tenancy Act* (the “Act”), and, sought an order that the landlord comply with the Act, the regulations, or the tenancy agreement, pursuant to section 62 of the Act. The latter order pertained to the landlord’s inappropriate entry into the rental unit and to the landlord’s illegal rent increase.

The tenant applied for dispute resolution on November 7, 2019 and a dispute resolution hearing was held on January 6, 2020. The tenant, his representative, the landlord, and the landlord’s representative attended the hearing; the parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised by either party.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issue of this application.

Preliminary Issue: OLC (section 62) Issue Severed

Rule 2.3 of the *Rules of Procedure* states that “Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.”

The application under section 62 in respect of landlord entry into the rental unit is, I find, unrelated to the disputed rent increase. As such, this aspect of the section 62 application is dismissed with leave to reapply. Second, while I make no order under section 62 in relation to a rent increase, I shall reference the relevant section of the Act below.

Issue

Whether the landlord illegally raised the rent.

Background and Evidence

The tenant's Representative testified that the tenancy began in 2005. Monthly rent was \$500.00, due on the first of the month, and is currently \$500.00, some 15 years later. There were fragments of various tenancy agreements submitted into evidence. I shall turn to the tenancy agreement in a moment.

While the current monthly rent is \$500.00, this has not always been the case. At one point, the landlord raised the rent—without proper notice—to \$650.00. It was then lowered back to \$500.00. In October 2018 the rent went from \$500.00 to \$600.00. This increased amount lasted for twelve months. In February 2019 the rent was lowered to \$550.00, and the revised amount was in place for five months. Then, in July 2019, the rent went from \$550.00 to \$650.00, and lasted for a period of \$900.00. All told (and referencing a worksheet submitted into evidence), the tenant paid a total of \$2,350.00 in illegal rent.

The Representative submitted that the partial tenancy agreement says that the tenant has to vacate the rental unit in July 2020, but the portion of the tenancy agreement indicating a reason is blank. (At least on one of the versions submitted.)

The landlord's son testified and argued that his father "has been as kind as kind as possible" to the tenant despite the many issues that the tenant has caused over the years. Apparently, the tenant does not maintain a clean residence, which has resulted in the attraction of mice. And, the tenant feeds a neighbourhood cat, which has attracted both mice and a racoon. In addition, the landlord has allegedly suffered property damage resulting from the pest attraction.

Regarding the rent increases, the son testified that the tenant was "given months in advance" warning about the increases. He entered into what he frequently referred to as a gentlemen's agreement about a rent increase in 2018. Rent had not increased in more than a decade, and so it was not unacceptable to finally do so. Moreover, the rent increase was meant to help recoup the costs of damage to the property caused by the tenant and his unacceptable behavior, which, it was added, "has been endangering everyone."

The landlord's son further testified that the rent increases were only ever temporary and meant to be temporary. They were simply meant to cover costs. The tenant "agreed to the temporary increases, and the son was under a clear understanding that he and the tenant had entered into a gentlemen's agreement as such.

It is unfortunate, submitted the son, that until now the parties have been able to maintain a landlord-tenant relationship without the need for paperwork, but now "we have to deal with paperwork."

In rebuttal and final submissions, the tenant's Representative argued that no gentlemen's agreement ever occurred. Further, the tenant only "agreed" to the rent increases, and paid such increased amounts, for fear of losing his home. The "mouse problem in the house" was not confined to the rental property and was in no way related to the tenant's behavior, added the Representative. She argued and closed with the fact that the rent increases were illegal and that no written notice was ever provided.

In his final submissions the landlord's son argued that the tenant has been late and missed rent payments in the past, and that the landlord essentially let him keep renting. So, the rent increases basically helped pay for the late and missing rent amounts owed.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I shall first review the law as it pertains to rent increases. Then, I will apply the law to the facts and render a decision regarding this dispute.

Section 41 of the Act states that "A landlord must not increase rent except in accordance with this Part."

Section 42 of the Act outlines how a rent increase is put into place by a landlord:

- (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.

The landlord will see that section 42(3) of the Act states that the rent increase must be in the approved form, of which the form is entitled "Notice of Rent Increase – Residential Rental Units" and is form "#RTB-7." Such a notice must be given at least three months before a rent increase goes into effect. And, it is self-evident that any increase must comply with the maximum allowable rent increase amounts, which can be found at <http://www.housing.gov.bc.ca/rtb/WebTools/RentIncrease.html>.

In this case, the landlord never provided notice of any of the rent increases in the approved form. The Act does not recognize a "gentlemen's agreement" as a valid form of notice regarding any rent increase. It is long recognized in law that a gentlemen's agreement is an unwritten agreement that is not legally enforceable, and no such agreement is enforceable in British Columbia. That the tenant "agreed" to the rent increases, and paid for such increases, is neither here nor there, and does not create a legally binding agreement to amend the rent to the amount that the landlord sought.

Finally, the motives behind the landlord increasing the rent are irrelevant. Perhaps the tenant is feeding the neighbourhood cat, which has attracted mice, which has led to property damage. But the landlord has other recourse under the Act to obtain compensation for such costs or damages. That the rent increase was "temporary" is also not a valid reason for increasing the rent. And, lastly, if the tenant is (or was) late on his rent the landlord may always issue a 10 Day Notice to End Tenancy for Unpaid Rent. A landlord may not simply raise the rent to recoup his losses for non- or underpayment of rent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving their dispute of the previous rent increases.

I find that the monthly rent, due on the first of the month, shall remain at \$500.00 unless and until the landlord increases the monthly rent in full compliance with the Act.

Conclusion

I order that the monthly rent, due on the first of the month, shall remain at \$500.00 unless and until the landlord increases the monthly rent in full compliance with the Act.

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 6, 2020

Residential Tenancy Branch