



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Introduction, Preliminary and Procedural Matters

This hearing dealt with the landlords' Application for an Additional Rent Increase (application) pursuant to section 43(3) of the Residential Tenancy Act (Act).

The named landlord and representatives from the named corporate tenant attended the hearing and were affirmed. The hearing procedure was explained to the parties.

Neither party raised any concerns or issues about service of the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me. In reviewing the landlord's application and evidence, I noted problematic, possibly fatal issues with the landlord's application and evidence.

I informed the landlord of some of my concerns, but out of an abundance of caution, in the event the landlord could overcome those issues, I allowed the hearing to proceed. I cautioned the landlord that I may not be able to make a determination of the merits of his application, in light of the issues, as will be more fully set out in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues(s) to be Decided

- Has the landlord provided sufficient evidence to support an additional rent increase under section 43(3) of the *Act*?

Background and Evidence

The evidence shows that this tenancy began on November 1, 2017.

The written tenancy agreement entered into evidence by the landlord showed in one place that monthly rent was \$2,050.00. Included in the monthly rent were all utilities, including internet, garbage collection, furniture, laundry, sheets, towels, dishes and 2 television sets.

The written tenancy agreement also showed that the security deposit paid by the tenant was \$1,537.50.

Attached to the tenancy agreement was a handwritten “punch list”, which appeared to be a lengthy list of repairs and renovations to be performed on the rental unit. On the 2nd page of the punch list, were notes, which in some areas on the page were too light to be legible.

Also, on the 2nd page, the monthly rent included other items; however, I was unable to read all the words due to the faint copy.

The notes on the punch list also said the above totals could be adjusted at the end of the year if “more than estimated”, with invoices.

On the landlords’ application, they marked box “A”, which instructed the applicants to complete if part of their request for the additional rent increase included that the landlord had made significant repairs or renovations to the residential property if they could not have been foreseen under reasonable circumstances and not recur within a time period that is reasonable for the repair or renovation.

The landlord also marked box “C”, which claims the applicant, has incurred a financial loss for the financing costs of purchasing the residential property, if they could not have been foreseen under any circumstances.

The applicant is then instructed to proceed to complete other boxes. The landlord completed those boxes, but additionally completed one box that was not related to his request for the rent increase.

On the last page of the application, which the applicant is instructed to provide the date of the last increase, the current rent, the requested increase, and the total rent.

Here the landlord said the last increase was November 1, 2017, that the current rent was \$1,400.00, the requested increase was \$2,400.00, and the total rent was \$3,400.00.

The landlord confirmed that the percentages on the form were mathematically incorrect.

The landlord submitted at least 150 pages of evidence, which were not numbered or organized, as there was no index or any other way to breakdown the evidence.

The tenant submitted 11 pages of evidence, which contained a cover page and were numbered.

In their evidence, the tenant, in an email to the landlord, said that the actual monthly rent was a base rent of \$1,400.00, renovations for \$100.00, internet for \$100.00, electricity and gas for \$250.00 and 4 couches for \$200.00, for a total of \$2,050.00.

I note this appeared to be on the 2nd page of the punch list, which was faint. Further, I was able to determine, with the assistance of testimony and the tenant's evidence, that this was the agreement.

In that same email, the tenant wrote to the landlord that they were to pay for the couches only for the duration of the first year. The tenant also wrote that the couches were fully paid.

Analysis

After reviewing the evidence, I find the landlords' application and evidence to contain fatal flaws.

I was unable to determine the amount of monthly rent agreed upon by the parties.

The written tenancy agreement states that monthly rent was \$2,050, which included, among other things, utilities, including internet, and furnishings.

The punch list attached to the written tenancy agreement, seems to contradict that monthly rent was \$2,050.00, as a listing of additional items, such as for renovations, utilities, and couches, showed that these were for separate charges, each, totaling \$2,050.00.

The tenant's understanding of the items on the punch list included that the \$200.00 for couches was not a permanent addition.

I find support for the tenant's assertion, as the landlord/applicant said the monthly rent was \$1,400.00, in contradiction to the written tenancy agreement.

Additionally, the amount charged for the costs of renovations appeared to be a fluctuating, negotiable amount, rather than the fixed amount of \$100.00 listed on the punch list.

The amount for the security deposit exceeded the legal limit of half of the monthly rent, maximum, so that figure was of no help in making a determination.

The calculations on the landlords' application did not match.

I find it would be confusing for the tenant/respondent to understand the exact proposed rent increase, due to the inconsistent evidence.

Finally, Residential Tenancy Branch Rules of Procedure 3.7 addresses the issue of the landlords' evidence, as follows.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

In this case, for the reasons listed above, I find the landlords' application itself was confusing and contradictory. I further find the landlords failed to prove what the agreed upon monthly rent was, as extra items, which could or could not be permanent, were included. It was not clear from the written tenancy agreement that utilities, the internet, or furnishings were included in the \$2,050.00, or if these were separate, possibly ever-changing, terms.

The tenant thought at least one of the items, the couches, were to come off the total, and the landlord did not disagree.

As to the landlords' evidence, I have excluded it from consideration. I find the evidence was not organized and in places, not legible, as mentioned in this Decision.

I therefore find that the landlords' application fails due to insufficient and conflicting evidence and application form.

Given the above, I dismiss the landlords' application due to insufficient evidence without leave to reapply.

Conclusion

The landlord's application is dismissed due to insufficient evidence, without leave to reapply.

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: February 7, 2020

Residential Tenancy Branch