



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR, MNDCT, DRI, FFT
 LL: OPUM-DR, OPU-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenants made an Application for Dispute Resolution on March 17, 2020 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 5, 2020 (the “10 Day Notice”);
- a monetary order for compensation;
- to dispute a rent increase; and
- an order granting recovery of the filing fee.

The Landlord’s Application for Dispute Resolution by Direct Request was made on March 17, 2020 (the “Landlord’s Application”) and was adjourned to a participatory hearing. The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord, and the Landlord’s Interpreter G.J. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 Matters

At the start of the hearing, the parties testified and agreed that the parties had mutually agreed to end the tenancy on April 30, 2020. As such, the parties agreed that the Landlord would be provided with an Order of Possession effective at 1:00 PM on April 30, 2020.

Furthermore, during the hearing, the Tenants agreed that they are required to pay the two outstanding water bills in the amount of \$81.27 and \$71.70 to the Landlord. As such, the Landlord is granted monetary compensation in the amount of \$152.97. The hearing continued based on the following claims;

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. Are the Tenants entitled to monetary compensation in relation to a over payment of rent due to a rent increase, pursuant to Section 41 and 67 of the *Act*?
4. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 15, 2016. Currently, rent in the amount of \$2,300.00 is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$950.00 which the Landlord continues to hold.

The parties testified and agreed that the Tenants have failed to pay rent in the amount of \$2,300.00 for the month of March and April 2020. The Landlord stated that currently,

the Tenants owe the Landlord \$4,600.00 for unpaid rent. If successful, the Landlord is also seeking the return of the filing fee.

The Tenant stated that he felt entitled to withholding the rent as he feels as though the Landlord has increased the rent in such a way that contradicts the *Act*. The Tenant stated that the rent at the start of the tenancy was \$1,900.00. The Tenant stated that in August of 2018 the parties came together and signed an addendum to the tenancy agreement which stated that the Tenants would be required to pay rent in the amount of \$2,100.00 commencing on September 1, 2018 for the first six month, at which point the rent would increase to \$2,300.00 each month.

The Tenant stated that he signed the agreement under duress as the Landlord had mentioned that he was wishing to move a family member into the rental unit. The Landlord stated that the parties signed the addendum to the tenancy agreement, agreeing to the rent increase and have paid rent on time, without issue, up until March and April 2020. The parties provided a copy of the addendum which outlines the rent increase which was signed by both parties on August 28, 2018.

The Tenants are stating that the Landlord was not permitted to raise the rent above the allowable amount, without proper notice, not in the approved form and less 12 months between increases. As such, the Tenant stated that they have over paid the Landlord rent in the amount of \$6,200.00 since the rent increases came into effect. The Tenants provided a monetary worksheet in support of their claim. If successful, the Tenants are also seeking the return of their filing fee.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

Section 42 of the *Act* outlines the allowable timing and notice of rent increases;

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.

Section 43 of the *Act* outlined the allowable amount of rent increase;

A landlord may impose a rent increase only up to the amount that is calculated in accordance with the Regulations, ordered by the Director, or agreed to by the tenant in writing.

The Residential Tenancy Policy Guideline 37 offers further clarity around Rent Increases;

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.

I accept that the parties agreed that the Tenants have failed to pay rent to the Landlord for the month of March and April 2020. I accept that the rent at the start of the tenancy was \$1,900.00 which was due to the Landlord each month.

I accept that the parties came together on August 28, 2018 and signed an addendum to the tenancy agreement which stated that the Tenants would be required to pay rent in the amount of \$2,100.00 commencing on September 1, 2018 for the first six month, at which point the rent would increase to \$2,300.00 each month.

While the parties agreed to the rent increase in writing, I find that the Landlord was still obligated to follow the requirements in Section 42 of the *Act* regarding the timing and notice of rent increases. The landlord must still issue to the tenant a Notice of Rent Increase despite the fact that they signed an addendum agreeing to the 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.

As such, I find the Tenants are successful in disputing the rent increase issued by the Landlord on August 28, 2018. I find that the Tenants were only required to pay rent in the amount of \$1,900.00 per month to the Landlord which was reflected in the original tenancy agreement between the parties. In light of the above, I find that the Tenants have overpaid rent to the Landlord in the amount of \$6,200.00 since September 1, 2018 and are entitled to monetary compensation in the amount of \$6,200.00 for the overpayment.

I find that the Tenants were required to pay rent to the Landlord in the amount of \$1,900.00 for the month of March and April 2020. The parties had previously agreed that the Tenants are required to reimburse the Landlord \$152.97 for the unpaid water bills. As such, I find that the Landlord is entitled to monetary compensation in the amount of \$3,952.97.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As both parties were successful in their Applications, I decline to award a filing fee to either party.

Set-off of Claims

The Tenants have demonstrated an entitlement to a monetary award of \$6,200.00. The Landlord has demonstrated an entitlement to a monetary award of \$3,952.97.

Setting of the parties' claims, and pursuant to section 67 of the *Act*, I grant the Tenants with a monetary order in the amount of \$2,247.03 (\$6,200.00 - \$3,952.97).

Conclusion

The parties mutually agreed to end the tenancy on April 30, 2020. The Landlord is provided with an order of possession effective at **1:00 PM on April 30, 2020** after the

order is served to the Tenants. If the Tenants fail to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Tenants are granted a monetary order in the amount of **\$2,247.03**. The monetary order should be served to the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 21, 2020

Residential Tenancy Branch