Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC, DRI, OLC, RR, and FFT

Introduction

A hearing was convened on April 09, 2020 in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act*) and/or the tenancy agreement, to dispute a rent increase, and to recover the fee for filing this Application**.**

The Application for Dispute Resolution was amended to include an application to dispute a One Month Notice to End Tenancy for Cause and for an Order requiring the Landlord to make repairs/emergency repairs to the rental unit.

The hearing on April 09, 2020 was adjourned for reasons outlined in my interim decision. The hearing was reconvened on May 25, 2020 and was concluded on that date.

At the hearing on April 09, 2020, the Tenant stated that on February 05, 2020 the Dispute Resolution Package was personally served to the male Landlord. The Landlord acknowledged receipt of these documents.

At the hearing on April 09, 2020, the Tenant stated that on March 19, 2020 the Amendment to the Application for Dispute Resolution Dispute Resolution Package was mailed to the Landlord on March 19, 2020. The Landlord acknowledged receipt of these documents.

In February and March of 2020, the Tenant submitted evidence to the Residential Tenancy Branch. At the hearing on April 09, 2020, the Tenant stated that this evidence was left in the Landlord's mail box on March 23, 2020. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

In March of 2020 the Landlord submitted evidence to the Residential Tenancy Branch. At the hearing on April 09, 2020, the female Landlord stated that this evidence was served to the Tenant by registered mail. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On April 03, 2020 the Tenant submitted additional evidence to the Residential Tenancy Branch. At the hearing on April 09, 2020, the Tenant stated that this evidence was left evidence was left in the Landlord's mail box on April 03, 2020. The Landlord acknowledged receiving this evidence, although the Landlord does not recall when it was received. The female Landlord stated that they have had sufficient time to consider the evidence left in their mail box on April 03, 2020. As the Landlord has had sufficient time to consider the evidence, it was accepted as evidence for these proceedings.

At both hearings the parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at each hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. I find that the Tenant has identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during a single proceeding.

As discussed in my preliminary decision, by the time I became aware the Application for Dispute Resolution had been amended to include an application to cancel a One Month Notice to End Tenancy for Cause and an application for an Order requiring the Landlord to make repairs, I had already heard evidence regarding the application to dispute a rent increase and the application for an Order requiring the Landlord to comply with the *Act* and/or the tenancy agreement. Given that the parties have both made submissions and given evidence about these two issues, I find it reasonable to render a decision regarding those matters.

I also find it reasonable to consider the application to cancel a One Month Notice to End Tenancy for Cause, as I find that matter to be urgent. I will also consider the application to recover the fee for filing this Application for Dispute Resolution.

I am severing the application for an Order requiring the Landlord to make repairs. In the event the parties are unable to resolve the need for repairs, the Tenant is at liberty to file another Application for Dispute Resolution for an Order requiring the Landlord to make repairs.

Issue(s) to be Decided

Has there been a rent increase that does not comply with the *Act*?
Is there a need to issue an Order requiring the Landlord to comply with the *Act* or the tenancy agreement?
Should the One Month Notice to End Tenancy for Cause be set aside?
Is the Tenant entitled to recover the fee for filing this Application for Dispute Resolution?

Background and Evidence discussed on April 09, 2020

The Landlord and the Tenant agree that:

- this tenancy began in 2013;
- rent is due by the first day of each month;
- rent at the start of the tenancy was $800.00;
- in July of 2017 they mutually agreed that they would share the cost of cable/internet service;
- the Tenant began paying an additional $50.00 per month for cable on July 01, 2017;
- cable/internet service had not previously been provided to the tenancy;
- on August 01, 2017 the Tenant began paying rent of $850.00;
- on August 01, 2018 the Tenant began paying rent of $900.00;
- in 2018 they signed a new tenancy agreement, in which they agreed rent would be $900.00;
- the Landlord did not serve the Tenant with written notice of any rent increase.

The female Landlord stated that in 2017 they signed a new tenancy agreement, in which the tenant agreed to pay $850.00 in rent. The Tenant stated that she did not sign a new agreement in 2017. The female Landlord stated that the agreement they signed in 2017 was not submitted in evidence, as the Landlord cannot locate the agreement.

Term 4 of the tenancy agreement that was signed in 2018 reads:

> No pets or animals are allowed to be kept in or about the property without the prior written permission of the Landlord. Upon thirty (3) days' notice, the Landlord may revoke any consent previously given pursuant to this clause".

The Tenant submits that term 4 in the tenancy agreement is unconscionable.

Term 19 of the tenancy agreement that was signed in 2018 reads:

> On execution of this Lease, the Tenant will pay the Landlord a pet deposit of $ .00 (the "Pet Deposit") for their two pets.

The Landlord and the Tenant agree that the Tenant had two dogs when the tenancy agreement was signed in 2018, with the knowledge and consent of the Landlord. The Tenant stated that one of her dogs died in October of 2018.

The female Landlord stated that the Tenant should have asked permission to acquire a second dog after October of 2018.

The male Landlord stated that they allowed the second dog in 2013 because the first dog was old, and they were being kind. He stated that if the Tenant had asked permission for a second dog after October of 2018, they would have denied the request, as they did not want two dogs in the unit anymore.

The Tenant stated that when she got a second dog after October of 2018, she was facilitating an adoption and she did not intend to keep the dog. She stated that the adoption subsequently fell through and she kept the dog because she had bonded with it. She acknowledges she did not ask permission to keep this dog in the rental unit.

The Tenant is seeking clarification of whether she is permitted to keep the newly acquired dog.

The Tenant submits that other terms in the tenancy agreement, such as terms 72-75, are unconscionable. The Tenant acknowledged that the Landlord is not currently attempting to enforce these terms.

<u>Background and Evidence discussed on May 25, 2020</u>

The Landlord and the Tenant agree that on March 11, 2020 the Tenant was personally served with a One Month Notice to End Tenancy for Cause, which declared that she must vacate the rental unit by April 30, 2020.

Each party provided a significant amount of tenancy regarding the merits of the One Month Notice to End Tenancy for Cause. That testimony is not being recording in this decision, as the parties reached a settlement agreement in regard to the application to

cancel the One Month Notice to End Tenancy for Cause. As the parties reached a settlement agreement regarding the One Month Notice to End Tenancy for Cause, the reasons for ending the tenancy are moot.

The Landlord and the Tenant mutually agreed to settle the application to cancel the One Month Notice to End Tenancy for Cause under the following terms:

- the tenancy will end, by mutual agreement, on November 30, 2020;
- the Tenant retains the right to end the tenancy prior to November 30, 2020, by providing the Landlord with proper notice to end the tenancy; and
- the Tenant will continue to train the dog that is disturbing the Landlord by barking.

This settlement agreement was summarized for the parties on at least two occasions. All parties at the hearing clearly indicated that they agreed to resolve the application to cancel the One Month Notice to End Tenancy for Cause under these terms.

The parties both acknowledged that they understand they were not required to enter into this settlement agreement and that they understood the settlement agreement was final and binding.

Analysis

The *Act* defines "rent" as money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include a security deposit; a pet damage deposit; or a fee prescribed under section 97 (2) (k) of the *Act.*

On the basis of the undisputed evidence, I find that when this tenancy began the Tenant was not provided with cable/internet service as a term of the tenancy.

On the basis of the undisputed evidence, I find that in July of 2017 the parties entered into an agreement that they would share the cost of internet/cable service, for which the Tenant would pay $50.00 per month. As this was not a service previously provided with the tenancy, I find that this was an agreement they entered into that is entirely separate from their tenancy agreement and should not be considered rent. As this $50.00 monthly payment is not rent, I find that this payment does not constitute a rent increase.

Section 43(1)(c) of the *Act* authorizes a landlord to impose a rent increase only up to the amount agreed to by the tenant in writing.

I find that there is insufficient evidence to conclude that in 2017 the parties signed a new tenancy agreement in which they agreed that rent would be $850.00. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a copy of the tenancy agreement, that corroborates the Landlord's testimony that such an agreement was signed or that refutes the Tenant's testimony that one was not signed. As there is insufficient evidence to establish that such an agreement was made in writing, I find that the Landlord did not have the right to increase the rent to $850.00, pursuant to section 43(1)(c) of the *Act.*

Section 42 of the *Act* allows a landlord to impose a rent increase every 12 months. Section 43(1)(a) of the *Act* allows a landlord to impose a rent increase only up to the amount calculated in accordance with the regulations. In 2017 landlords were permitted to increase rent by 3.7%. As rent was $800.00 prior to rent being increased in 2017, the Landlord had the right, pursuant to section 43(1)(a) of the *Act*, to impose a rent increase of $34.40 in 2017. I find that the Landlord did not have the right to impose a rent increase of $50.00 in 2017, pursuant to section 43(1)(a) of the *Act.*

On the basis of the undisputed evidence, I find that in 2018 the parties signed a new tenancy agreement in which they agreed that rent would be $900.00. As this agreement was made in writing, I find that the Landlord had the right to increase the rent to $900.00, pursuant to section 43(1)(c) of the *Act.*

Section 42(2) of the *Act* stipulates that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. Section 42(3) of the *Act* stipulates that a notice of a rent increase must be in the approved form. The approved form for providing a tenant with notice of a rent increase is RTB-7. This legislative requirement is explained in Residential Tenancy Branch #37 which reads, in part, a " tenant's rent cannot be increased unless the tenant has been given proper notice in the approved form at least three months before the increase is to take effect".

On the basis of the undisputed evidence, I find that the Landlord did not serve the Tenant with written notice of a rent increase on the approved form. In spite of the fact the Landlord had the right to impose a rent increase in 2018, pursuant to section 43(1)(c) of the *Act*, I find that the Landlord did not have the right to collect rent of $900.00 because the Landlord did not give the Tenant written notice of a rent increase, as is required by sections 42(2) and 42(3) of the *Act.* The Landlord will have the right to collect $900.00 in rent once written notice of the rent increase is served to the Tenant in accordance with section 42 of the *Act*.

Section 43(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with the *Act*, the tenant may deduct the increase from rent or otherwise recover the increase. For the clarification of both parties, this section authorizes the Tenant to recover all of the $50.00 monthly rent increases that were collected between August 01, 2017 and July 31, 2018 ($600.00), and all of the $100.00 monthly rent increases that were collected since August 01, 2018 ($2,200.00). **.**

Section 6(3)(b) of the *Act* stipulates that a term of a tenancy agreement is not enforceable if the term is unconscionable.

Residential Tenancy Branch Policy Guideline 8 reads, in part:

Under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act,* a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

Terms that are unconscionable are not enforceable[1]. Whether a term is unconscionable depends upon a variety of factors.

A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage. Exploiting the age, infirmity or mental weakness of a party may be important factors. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party.

I find that the portion of term 4 of the tenancy agreement that prohibits a tenant from keeping animals "in or about the property without the prior written permission of the Landlord" is not unconscionable. I find that this is a common term in a tenancy agreement, that it is fair to both parties, and that it is, therefore, enforceable.

I find that the portion of term 4 of the tenancy agreement that grants the Landlord the right to revoke any "consent previously given pursuant to this clause" with thirty days' notice is unconscionable. I find that this portion of term 4 is both oppressive and grossly unfair to the tenant. I find that it gives an inordinate amount of power to a Landlord, as it could require a tenant, who is likely very close to a pet, to have to make a choice between abandoning a pet or remaining in a rental unit. As I find that portion of the term is unconscionable, I find that this portion of the term is unenforceable, pursuant to section 6(3)(b) of the *Act.*

On the basis of the undisputed evidence, I find that when the tenancy agreement was signed in 2018, the Tenant had two dogs. This fact is acknowledged in term 19 of the tenancy agreement and serves as written permission to have two pets.

On the basis of the undisputed evidence, I find that one of the Tenant's pets died in October of 2018 and that she subsequently replaced that dog with a second dog. As the tenancy agreement does not specify the identity of the dogs the Tenant is permitted to keep on the property, I find that the Tenant had the right to bring a second dog onto the property after one of the original dogs died. I find that this right is derived from term 19 of the tenancy agreement and that she did not have to obtain permission for the second dog. As the Landlord does not have authority to revoke the Tenant's right to have two dogs, I find that the Tenant retains the right to keep two dogs in the unit.

As the parties were advised at the hearing on April 09, 2020, I will not be determining whether all sections of the tenancy agreement are enforceable. As the Landlord is not currently attempting to enforce some of the terms the Tenant believes are unconscionable, I find that it is not appropriate to consider the merit of those terms at these proceedings. In the event the Landlord attempts to rely on those terms in the future, the validity of the terms would be best considered by an Arbitrator who can consider the term in the context of the circumstances before the Arbitrator. I therefore am severing the application to consider the enforceability of some of the terms raised by the Tenant, in accordance with Rule 2.3 of the Residential Tenancy Branch Rules of Procedure.

On the basis of the terms of the settlement agreement reached at the hearing on May 25, 2020, I find that the parties have mutually agreed to end this tenancy on November 30, 2020 and that the Tenant may end the tenancy earlier by providing proper notice to end the tenancy on an earlier date.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to compensation, in the amount of $100.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

On the basis of the terms of the settlement agreement reached on May 25, 2020, I grant the Landlord an Order of Possession, which is effective on November 30, 2020. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Tenant has established a monetary claim, in the amount of $2,300.00, which includes a rent refund of $2,200.00 and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order for the amount of $2,300.00. The Tenant has the right to withhold this amount from future rent payments. In the event the **~~Landlord~~ Tenant** does not wish to recover this amount by withholding rent, the Order may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: May 25, 2020
Corrected Date: June 05, 2020

Residential Tenancy Branch