



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

DRI, OLC, MNDCT

Introduction:

A hearing was convened on May 29, 2020 in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, to dispute a rent increase, and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement.

The Tenant stated that on April 17, 2020 the Dispute Resolution Package was served to the Landlord by email. The Landlord acknowledged receipt of these documents.

The hearing on May 29, 2020 was adjourned for reasons outlined in my interim decision of May 29, 2020. The hearing was reconvened on June 29, 2020 and was concluded on that date.

In May of 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via email, on May 20, 2020. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

In May of 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via email, on May 12, 2020 and May 25, 2020. The Landlord denied receiving this evidence and the Tenant was given the opportunity to re-serve the evidence in accordance with the terms of my interim decision of May 29, 2020.

The Tenant stated that the evidence she submitted to the Residential Tenancy Branch in May of 2020 was re-served to the Landlord, via email, on June 01, 2020. The

Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

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

Issue(s) to be Decided:

Is the Tenant entitled to recover a rent increase that does not comply with the legislation?

Is the Tenant entitled to recover hydro overpayment(s)?

Is the Tenant entitled to damaged personal property?

Is there a need to issue an Order requiring the Landlord to comply with the *Act* and/or the tenancy agreement?

Background and Evidence:

The Landlord and the Tenant agree that:

- This tenancy began in August of 2007;
- In 2018 the rent was \$900.00 per month;
- Rent is due by the first day of each month;
- They verbally agreed to a rent increase of \$50.00, effective January 01, 2019;
- The Tenant never agreed to the rent increase, in writing;
- The Landlord never gave the Tenant written notice of the rent increase;
- The Tenant paid the rent increase from January 01, 2019 to March 01, 2020;
- The Tenant is still living in the rental unit;
- The Property was sold in 2020;
- During the tenancy the Tenant was required to pay 60% of all hydro and gas bills for the property; and
- The Tenant has overpaid her gas and hydro bills by \$2,018.39.

The Tenant is seeking compensation for a damaged cooler. She stated that the cooler is scratched; she never saw the Landlord damage the cooler; the Landlord, the Tenant's son and the Tenant's father all have access to the garage where the cooler is stored; and she does not know if the Landlord, her son, or her father damaged the cooler. The Landlord stated that he did not damage the cooler.

The Tenant is seeking an Order requiring the Landlord to return all keys to the rental unit to the new owner of the residential property. She said the new owner told her that the Landlord did not give him keys to the rental unit.

The Landlord stated that he has given all the keys to the rental unit that he had in his possession to the new owner.

Analysis:

On the basis of the undisputed evidence, I find that the Tenant was required to pay 60% of all hydro and gas bills for the residential property, and she has been overcharged for those costs by \$2,018.39. As there is no dispute that the Tenant has been overcharged by this amount, I find that she is entitled to a refund of \$2,018.39.

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is calculated in accordance with the regulations. Section 22(2) of the Residential Tenancy Regulation stipulates that a landlord may impose a rent increase that is no greater than two percent above the annual inflation rate which, for 2019, was 2.5%. As the rent increase that occurred on January 01, 2019 was 5.5%, which is greater than the amount that is calculated in accordance with the regulations, I find that the Landlord did not have authority to increase the rent to \$950.00 on January 01, 2019 pursuant to section 43(1)(a).

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that has been ordered by the director on an application under section 43(3) of the *Act*. As I have no evidence that the Landlord made an application under section 43(3) of the *Act*, I find that the Landlord does not have authority to increase the rent pursuant to section 43(1)(b).

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is agreed to by the tenant in writing. As I have no evidence that the Tenant agreed to the proposed rent increase, in writing, I find that the Landlord did not have authority to increase the rent to \$950.00 on January 01, 2019, pursuant to section 43(1)(c).

Section 43(5) of the *Act* stipulates that If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. As the Landlord collected a rent increase of \$50.00 between January 01, 2019 and March 01, 2020, which did not comply with the *Act*, I find that the Tenant is entitled to a rent refund of \$750.00.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or

loss was the result of a breach of the tenancy agreement or *Act*, establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenant submitted insufficient evidence to establish that the Landlord damaged her cooler. In reaching this conclusion I find that the Tenant supported no evidence to refute the Landlord's claim that he did not damage her cooler. I therefore dismiss the Tenant's claim for the damaged cooler.

In the absence of any concrete evidence to the contrary, I accept the Landlord's testimony that he gave all the keys to the rental unit that he had in his possession to the new owner. I therefore dismiss the application to issue an Order requiring the Landlord to return keys to the new owner.

Conclusion:

The Tenant has established a monetary claim of \$2,768.39, which includes \$2,018.39 for utility overpayments, and \$750.00 refund for the rent increase that did not comply with the *Act*, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be 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: June 29, 2020

Residential Tenancy Branch