



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, DRI, FFT

Introduction

This hearing was scheduled to deal with a tenant's application to dispute a rent increase that started October 2019 and orders for the landlords to comply with the Act regulations or tenancy agreement after they receive a rent Repayment Plan dated August 15, 2020.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

It was clear from the outset of the hearing that the parties have a very acrimonious tenancy relationship. Both parties attempted to raise issues not identified on the Application for Dispute Resolution. I did not permit the parties to do so, or make inflammatory statements, and I limited their submissions to that relevant to the disputes identified on the Application for Dispute Resolution. The parties were encouraged to familiarize themselves with their respective rights and obligations under the Act and conduct themselves accordingly. The parties were directed to the Residential Tenancy Branch website and to contact an Information Officer if they have any questions.

Issue(s) to be Decided

1. Have the tenants paid an unlawful rent increase?
2. Is the rent repayment plan dated August 15, 2020 accurate and enforceable?
3. Award of the filing fee.

Background and Evidence

Despite the acrimony between the parties, most of the facts pertaining to the matters before me were not in dispute, as reflected below.

The one year fixed term tenancy started on October 15, 2018 and continued on a month to month basis upon expiry of the fixed term. The rent was set at \$1500.00 and it was payable on the first day of every month. The tenants paid a security deposit of \$750.00. The written tenancy agreement is on the standard tenancy agreement provided by the Residential Tenancy Branch and there is no additional terms or addendum attached to the tenancy agreement.

On July 6, 2019 the landlord issued a Notice of Rent Increase to the tenants, increasing their rent by \$300.00 per month to \$1800.00 per month, starting October 1, 2019. The parties provided consistent submissions that the rent was increased following a verbal discussion but without the tenant's written agreement.

For the months of October 2019 through March 2020 and September 2020 the tenants have paid rent in the amount of \$1800.00. The tenants are of the position the rent increase of \$300.00 per month was unlawful and they seek recovery of the overpaid rent. The landlords rely upon receiving the tenant's verbal agreement for the rent increase.

I heard from both parties that the landlords have issued a 2 Month Notice to End Tenancy for Landlord's Use of Property to the tenants in August 2020; the tenants did not file to dispute the 2 Month Notice; and, the tenants are set to vacate the rental unit by the effective date of October 31, 2020. Both parties provided consistent submissions that the tenants withheld rent for October 2020 as compensation they are entitled to receive pursuant to the tenancy ending by way of a 2 Moth Notice.

As for the period of April 2020 through August 2020 the parties were in agreement that the landlords received rent of \$500.00 per month on behalf of the tenants from the BC government.

The parties were in disagreement as to whether the tenants owed the landlords any more rent for the period of April 2020 through August 2020. I declined to hear submissions on that point as the landlords have not made a monetary claim for unpaid rent; I set aside the Repayment Plan because it was inaccurate for reasons provided in the analysis; and, the tenancy is ending before the tenants would be required to make

an installment payment based on a new Repayment Plan. As such, I informed the parties that the issue as to whether the landlords are entitled to any more rent for the period of April 2020 through August 2020 would be resolved under a Landlord's Application for Dispute Resolution for unpaid rent.

I also heard consistent testimony that the tenants had been paying utilities to the landlords in addition to rent. The parties were in dispute as to whether the tenants owe the landlords more for utilities or whether the tenants ought to be refunded a portion of what they have paid for utilities. I did not permit further submissions on this point because the tenant's did not seek reimbursement of utilities on their Application for Dispute Resolution and the landlords have not make a monetary claim for unpaid utilities; the repayment plan dated August 15, 2020 includes utilities but it has been set aside for reasons provided in the analysis; and, the tenancy is ending before installments would be payable under a new Repayment Plan. As such, both parties are at liberty to make an Application for Dispute Resolution if they seek recovery of utilities overpaid or owed.

Analysis

Upon consideration of all of the relevant evidence before me, I provide the following findings and reasons with respect to the two issues before me.

Where a landlord seeks to increase the rent, the increase must be done in accordance with sections 40 through 43 of the Act. These sections provide for the timing, form and amount of permissible rent increase.

Upon review of the Notice of Rent Increase provided as evidence by the tenants, I find it is in the approved form but the timing of the rent increase was incorrect. Rent may not be increased more frequently than once per year or at least one year after the tenancy started. The tenancy started on October 15, 2018 and, as such, a rent increase taking effect on October 1, 2019 violates the timing requirement. Further, issuing a Notice of Rent Increase in July 2019 would mean a rent increase could not take effect until after three full months, which would be November 1, 2019 at the earliest. Therefore, I find the landlords violated the timing requirements for rent increases and increased the rent prematurely.

The amount of the rent increase is limited, as provided under section 43(1) of the Act:

Amount of rent increase

43 (1)A landlord may impose a rent increase only up to the amount

(a)calculated in accordance with the regulations,

(b)ordered by the director on an application under subsection (3), or

(c)agreed to by the tenant in writing.

[my emphasis underlined]

The Residential Tenancy Regulations referred to under section 43(1)(a) limit the annual rent increase to the amount of inflation. For rent increases that took effect in 2019 the regulations limited the increase to 2.5%. The rent increase of \$300.00 is well beyond that at 20%.

The rent increase referred to under resection 43(1)(b) is where a landlord makes an Application for an Additional Rent Increase to the Director and the Director authorizes a rent increase beyond the annual allowable amount. The landlords in this case did not obtain the Director's authorization to increase the rent by 20% by making an Application for an Additional Rent Increase.

Finally, the parties may have orally agreed to increase the rent beyond the annual allowable amount; however, section 44(1)(c) is clear that a rent increase that exceeds the annual allowable amount or is not authorized by the Director requires the tenant's agreement in writing. The landlords did not obtain the tenant's agreement in writing to increase the rent by 20%.

In light of the above, I find the landlords increased the rent unlawfully by exceeding the annual allowable rent increase in the absence of the Director's authorization or the tenant's written agreement and the landlords increased the rent prematurely. Therefore, I find the amount of rent the landlords were legally entitled to receive from the tenants remained at \$1500.00 per month and I set the monthly rent at that amount.

Since the tenants paid rent in the amount of \$1800.00 to the landlords for seven months, I find the tenants entitled to recover those overpayments in keeping with section 43(5), which provides:

(5) 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.

Since the tenancy is ending shortly and there is an unresolved dispute as to whether the tenants owe the landlords any other rent, I provide the tenants with a Monetary Order to recover the overpayments totalling \$2100.00 [(\$1800.00 - \$1500.00) x 7 months] for the period of October 2019 through March 2020, plus September 2020.

As for the tenant's request for orders for compliance with respect to the Repayment Plan dated August 15, 2020, I find the Repayment Plan is inaccurate and not enforceable as it is based on the monthly rent of \$1800.00 which I have found to be an unlawful amount. To be clear, in setting aside the Repayment Plan due to the unlawful rent increase, I find it unnecessary and I make no finding as to whether the landlords waived entitlement to rent beyond \$500.00 per month for the months of April 2020 through August 2020. Rather, that issue shall be determined if the landlords make a monetary claim against the tenants for unpaid rent.

Since the tenants were successful in establishing the rent was unlawfully increased and I found the Repayment Plan was inaccurate, I award the tenants recovery of the \$100.00 filing fee.

In keeping with all of my findings and awards above, I provide the tenants with a Monetary Order in the sum of \$2200.00 to serve and enforce upon the landlords.

Conclusion

The tenants are provided a Monetary Order in the sum of \$2200.00 to recover overpaid rent for the period of October 2019 through March 2020, plus September 2020; and, the filing fee.

The Repayment Plan dated August 15, 2020 is inaccurate and I have set it aside so that it is not enforceable. However, I have made no finding as to whether the tenants owe or the landlords are entitled to receive more rent for the affected period of April 2020 through August 2020. Since the tenancy is about to end, installments under a new Repayment Plan would not be required before the tenancy is over. Therefore, if the landlords remain of the position they are entitled to unpaid rent for the period of April

2020 through August 2020, they may seek recovery by way of a Landlord's Application for Dispute Resolution for a Monetary Order.

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: October 09, 2020

Residential Tenancy Branch