



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WARD TAYLOR HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, MNDCT, DRI

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on October 02, 2020 (the “Application”). The Tenants applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated October 29, 2020 (the “Notice”);
- For an order that the Landlord comply with the act, regulation and/or the tenancy agreement;
- For compensation for monetary loss or other money owed; and
- To dispute a rent increase that is above the amount allowed by law.

The Tenants attended the hearing. Nobody attended the hearing for the Landlord. I explained the hearing process to the Tenants who did not have questions when asked. The Tenants provided affirmed testimony.

The Tenants advised that Tenant T.S. still lives in the rental unit but Tenant R.O. has moved out. I asked the Tenants what they intended to do with the Application and the dispute of the Notice. Tenant T.S. said the Landlord cancelled the Notice. I asked the Tenants whether they wanted to proceed with the dispute of the Notice or withdraw the dispute of the Notice. The Tenants asked to proceed with the dispute of the Notice.

During the hearing, the Tenants confirmed the landlord name should reflect the landlord name on the tenancy agreement and this is reflected in the style of cause.

The Tenants submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and Tenants’ evidence.

Tenant T.S. testified that the hearing package and evidence were sent to the Landlord by registered mail at the address on the tenancy agreement and Notice on October 07, 2020. The Tenants had submitted documentary evidence with Tracking Number 1 on it. I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered and signed for October 08, 2020. I note that the documentary evidence shows the package was sent to the address for the Landlord on the Notice.

Based on the undisputed testimony of Tenant T.S., documentary evidence and Canada Post website information, I am satisfied the Landlord was served with the hearing package and evidence in accordance with sections 59(3), 89(1)(c) and 88(c) of the *Residential Tenancy Act* (the "Act").

As I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenants were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants entitled to an order that the Landlord comply with the act, regulation and/or the tenancy agreement?
3. Are the Tenants entitled to compensation for monetary loss or other money owed?
4. Has the Landlord imposed a rent increase that is above the amount allowed by law?

Background and Evidence

A written tenancy agreement was submitted and the Tenants confirmed it is accurate. The tenancy started September 01, 2019 and was for a fixed term ending August 31, 2020. Rent is \$1,375.00 per month due on or before the first day of each month.

Tenant R.O. testified that he moved out of the rental unit at the start of November. He said he did not provide notice and that Tenant T.S. sent the Landlord an email. Tenant T.S. testified that he sent the Landlord an email asking if he could find a new roommate

and the Landlord agreed. Tenant T.S. confirmed no further tenancy agreements or documentation about the above tenancy agreement have been completed.

The Notice was submitted. It has no grounds checked on page two of the Notice.

Tenant T.S. confirmed receiving the Notice September 29, 2020 in person.

The Tenants sought compensation of \$594.63 due to paying for electrical usage unrelated to their rental unit. The Tenants testified that many things in the rental unit building were hooked up to their electrical panel such that they were paying for electricity to run these things, for example a common hot water tank and baseboard heater located in the building but not the rental unit. The Tenants testified that they had to pay the bills for this electricity which was used by others from September of 2019 to September of 2020. The Tenants testified that they brought this issue to the Landlord's attention, but the Landlord did not address it. The Tenants said they created a chart showing what portion of the electricity was used by them and what portion was not.

In relation to the rent increase issue, Tenant T.S. testified that the rent has never been increased. Tenant T.S. advised that this issue is in the Application because the Landlord threatened to raise rent in January of 2021 to an amount over what is permitted. Tenant T.S. said he is seeking an order that the Landlord comply with the requirements under the *Act* in relation to rent increases.

The Tenants submitted the following relevant evidence:

- The Notice;
- An addendum to the tenancy agreement which states at term 2 that the Tenants will pay for electricity;
- Emails about the electricity issue;
- Hydro bills;
- Outlines of the basis for the request for \$594.63; and
- Text messages about the electricity issue (most are difficult to read).

Analysis

1. *Should the Notice be cancelled?*

The Notice was issued pursuant to section 47 of the *Act*. Section 47(4) of the *Act* states:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

I accept the undisputed testimony of Tenant T.S. that he received the Notice September 29, 2020. The Application was filed October 02, 2020, within the time limit set out in section 47(4) of the *Act*.

Pursuant to rule 6.6 of the Rules of Procedure, when a tenant disputes a notice to end tenancy, the landlord has the onus to prove the grounds for the notice.

Here, the Landlord did not appear at the hearing to provide evidence to prove the grounds for the Notice. In the absence of evidence from the Landlord, the Notice has not been proven. Therefore, the Notice is cancelled.

I also note that the Notice does not comply with section 52(d) of the *Act* as it does not state the grounds for ending the tenancy on page two as required. I would have cancelled the Notice on this basis as well.

Given the Notice is cancelled, the tenancy will continue until ended in accordance with the *Act*.

2. *Are the Tenants entitled to an order that the Landlord comply with the act, regulation and/or the tenancy agreement?*

This request relates to Tenant T.S. seeking an order that the Landlord comply with the *Act* in relation to the rent increase provisions.

The Landlord is bound by the *Act* and *Residential Tenancy Regulation* (the "*Regulations*") in relation to rent increases.

The relevant sections of the *Act* state:

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) 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.

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.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution...

(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.

The relevant sections of the *Regulations* state:

Annual rent increase

22 (1) In this section, "inflation rate" means the 12 month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect...

(3) For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2019, a landlord may impose a rent increase that is no greater than the amount calculated as follows:

percentage amount = inflation rate.

Further, section 8 of the *Covid-19 (Residential Tenancy Act And Manufactured Home Park Tenancy Act) (No. 3) Regulation* states:

Rent increases – Residential Tenancy Act

8 (1) In this section, "rent increase" does not include an increase in rent that is

(a) for one or more additional occupants, and

(b) authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [requirements for tenancy agreements] of the Residential Tenancy Act.

(2) As an exception to Part 3 [What Rent Increases Are Allowed] of the Residential Tenancy Act and any other provision of the Residential Tenancy Act and the Residential Tenancy Regulation, if a landlord gives a notice of rent increase

under the Residential Tenancy Act and the effective date of the rent increase is after March 30, 2020, the rent increase does not take effect until July 10, 2021.

(3) If a landlord collects a rent increase that does not comply with this section, the tenant may deduct the increase from rent or otherwise recover the increase.

As stated on the RTB website, the maximum rent increase amount in 2021 cannot exceed 1.4%.

The Landlord is ordered to comply with all sections of the *Act, Regulations and Covid-19 (Residential Tenancy Act And Manufactured Home Park Tenancy Act) (No. 3) Regulation* relating to rent increases, including the above. For more information about rent increases, the parties should refer to the RTB website which is set out on the last page of this decision.

3. Are the Tenants entitled to compensation for monetary loss or other money owed?

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept the following based on the undisputed testimony of the Tenants and documentary evidence outlined above. The Tenants paid for electricity they did not use from September of 2019 to September of 2020. The electricity was used by others in the building or for appliances or services used by others in the building. The Tenants paid for \$594.63 worth of electricity not used by them. The Tenants brought this issue to the attention of the Landlord who did not address it.

I am satisfied the Landlord breached the tenancy agreement by having the Tenants pay for electricity not used by them and used by others in the rental unit building. Pursuant to the tenancy agreement, the Tenants were responsible for paying for their electricity use, not the electricity use of others outside the rental unit. I am satisfied this breach resulted in \$594.63 of loss to the Tenants. I am satisfied the Tenants attempted to mitigate their loss by raising this issue with the Landlord.

The Tenants are entitled to \$594.63 in compensation and are issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

4. Has the Landlord imposed a rent increase that is above the amount allowed by law?

Tenant T.S. confirmed this issue relates to the rent increase issue addressed above and that the rent has not been increased. Therefore, I dismiss this claim without leave to re-apply.

I note that I have not addressed the issue of Tenant R.O. moving out of the rental unit in relation to the above claims. I have not done so as I find it has no impact on the above claims or outcomes of the claims given the timing of the Application and subject matter of the claims.

Conclusion

The Notice is cancelled, the tenancy will continue until ended in accordance with the *Act*.

The Landlord is ordered to comply with all sections of the *Act, Regulations* and *Covid-19 (Residential Tenancy Act And Manufactured Home Park Tenancy Act) (No. 3) Regulation* relating to rent increases. For more information about rent increases, the parties should refer to the RTB website which is set out on the last page of this decision.

The Tenants are entitled to \$594.63 in compensation and are issued a Monetary Order in this amount pursuant to section 67 of the *Act*. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

The request to dispute a rent increase that is above the amount allowed by law is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 11, 2020

Residential Tenancy Branch