



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR, MNDCT, DRI

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order for repairs to the unit, site or property, having contacted the landlord in writing to make repairs, but they have not been completed; for an Order to reduce the rent for repairs, services or facilities agreed upon but not provided; for a monetary order for damage or compensation under the Act for the Tenant; and to dispute a rent increase from the Landlord.

The Tenant, the Landlord, his son, J.T., and counsel for the Landlord, D.M. ("Counsel"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed these in the hearing. The Parties also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which he said is the application to dispute a rent increase from the Landlord. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to dispute a rent increase from the Landlord. Therefore, the Tenant's other claims are dismissed, with leave to re-apply.

Issue(s) to be Decided

- Was a rent increase imposed contrary to the Act that should be cancelled?

Background and Evidence

The Parties agreed that the periodic tenancy began in December 2015, with a monthly rent of \$1,000.00, due by the fifth day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$500.00, and no pet damage deposit.

In the hearing, the Tenant said:

The Landlord imposed a rent increase without due process. In March 2017, he increased the rent by \$100.00 per month. I am claiming this back for increasing the rent without due process.

The Tenant said that the Landlord gave him no notice of the rent increase.

Counsel said:

[The Tenant's] evidence is that the rent was boosted by \$100.00 in 2017. However, in mid-2018, the Landlord received a rent statement indicating that the Tenant paid with a rent cheque of \$1,000.00 in January 2018; therefore, the rent was increased by \$100.00 in mid-2018.

Given the circumstances, [the Landlord] had not raised the rent for over two years. A neighbour was renting out a suite for \$1,600.00, and as a result, the Tenant agreed to a rent increase of \$100.00 and they shook hands on it.

Counsel referred me to paragraph three on page three of the Landlord's documentary submissions. The document is the Tenant's affidavit, sworn or affirmed on May 27, 2020, from a matter between the Parties in the British Columbia Supreme Court. The third paragraph of the Tenant's affidavit states:

3. The petitioner has lived at this rental unit since 2015 and the rent is \$1,100.00 a month plus 1/3 Utilities. Cable and internet (both Ethernet, and wireless (WiFi)) are included in the verbal agreement.

Counsel said that the Tenant stated what the rent was and did not take issue with it in the Supreme Court proceeding. Counsel said: "It is more of a retaliatory act, because of the eviction notice. The Tenant is estopped from this claim, because he has been paying it for so long.

The Tenant said:

I object to the hearsay and opinion of [Counsel]. There is no lease, no receipts. The rent increased in 2018 – it was still an \$100.00 over-payment for those months.

In his closing statement, the Tenant said:

Counsel says the only reason I'm doing this is because I'm upset at being evicted, and being presented with eviction documents after being dismissed from hospital. He said I would never have complained about this if not for the court procedures.

The Landlord said:

It is abundantly clear from a summary of the evidence and legal principles that he has no evidence. This is a retaliation complaint. The duration of the time from 2017 or 2018 - a significant time has elapsed since the meeting of the minds regarding the \$100.00 rent increase; therefore, the application should be rejected.

[The Tenant] said I never gave him receipts, but I did issue some. In the rent for January 2016, I deposited his cheque to start. He wrote a number of cheques, but he did give cash once in a while. He is just making excuses now. I gave him an original tenancy agreement, but he's now saying it was never written.

As for the rent increase, he was happy, and we shook hands and said it would be an extra \$100.00. Now, because of the eviction, he wants everything back now. He has a claim in March for \$15,000. He posted it on my door.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 60(2) states:

60 (2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

I find from the evidence of the Parties that the rent increase was made in mid-2018 at the latest. According to section 60 of the Act, the Tenant was required to apply to cancel the rent increase by mid-2020 at the latest. However, the Tenant applied to cancel the rent increase on October 8, 2020, which I find is beyond the limitation deadline imposed by section 60(2) of the Act, since this date is in the last quarter of the year and is not mid-year.

Further, given his acceptance of the rent increase for over two years, I find that the Tenant is estopped from asserting a right to dispute it. Estoppel is a legal principle that prevents someone from arguing something or asserting a right that contradicts what they previously said or agreed to by law. It is meant to prevent people from being unjustly wronged by the inconsistencies of another person's words or actions. In effect, estoppel is a form of waiver, when one party does not enforce their rights and the other party relies on this waiver.

Accordingly, I dismiss the Tenant's application to dispute the rent increase, as I find that the Tenant failed to apply for this claim on time and because he is estopped from trying to enforce his right to dispute the rent increase.

The Tenant's other claims are dismissed with leave to reapply.

Conclusion

The Tenant is unsuccessful in his Application to dispute a rent increase, as he applied beyond the two-year time limit set out in section 60(2) of the Act. Further, the Tenant is estopped from making this claim, because his delay in disputing the rent increase served as a waiver from trying to enforce any rights in this regard.

The Tenant's other claims are dismissed with leave to reapply, pursuant to Rule 2.3.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 05, 2021

Residential Tenancy Branch