



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on September 26, 2020, wherein the Tenant sought monetary compensation from the Landlord in the amount of \$1,000.00 for rent paid over and above the allowable amount as well as recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 1:30 p.m. on January 18, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee?

Background and Evidence

In support of his claim the Tenant testified as follows. He stated that this tenancy began November 1, 2018. Monthly rent was \$800.00 and he paid a \$400.00 security deposit. The tenancy ended at the end of August 2020.

The Tenant sought return of rent paid over and above the allowable amount. In this respect, the Tenant testified that the Landlord asked the Tenant to pay \$900.00 per month as of October 1, 2019 which the Landlord claimed was for “tax reasons”. The Tenant stated that he paid the requested amount as he felt he had no choice in the matter as he wasn’t prepared to move out and wasn’t prepared to deal with the conflict. The Tenant confirmed that he did not realize this was an illegal rent increase until he moved out and he was informed by the Residential Tenancy Branch. The Tenant confirmed the Landlord did not issue a proper notice of rent increase, did not give him three months notice, and did not raise it according to the allowable amount. Rather, the Landlord requested \$100.00 per month. The Tenant confirmed that he paid \$100.00 per month extra for 10 months including November 2019, December 2019, January-August 2020. He therefore sought the sum of \$1,000.00 for the overpayment of rent for those months.

In reply the Landlord testified as follows. The Landlord confirmed that he did not issue a notice of rent increase. The Landlord stated that when the Tenant first moved into the rental unit, he was not permitted to have any guests. He further stated that when the Tenant’s friend moved in, the Tenant “violated and ended the agreement” and they entered into a new one whereby the Tenant was to pay \$900.00 per month.

The Landlord further stated that when the Tenant started having a regular guest the cost of his utilities increased such that he needed the Tenant to pay more to cover these increased costs.

In reply to the Landlord’s submissions, the Tenant stated that his friend did not move in with him, rather, he had a guest who lived in another city, approximately three hours away, who came to visit on her days off.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential*

Tenancy Regulation, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The Tenant seeks monetary compensation for 11 months he paid an additional \$100.00 per month in rent. The Landlord argued that the tenancy ended when the Tenant's guest began residing regularly at the rental unit and the parties entered into a new tenancy agreement. The Landlord further argued that pursuant to this new agreement, the Tenant agreed to pay \$900.00 a month in rent.

A tenancy can only end in accordance with the *Act* as set forth in section 44 of the *Residential Tenancy Act* (the "*Act*") which reads as follows:

How a tenancy ends

44 (1)A tenancy ends only if one or more of the following applies:

(a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i)section 45 [*tenant's notice*];

(i.1)section 45.1 [*tenant's notice: family violence or long-term care*];

(ii)section 46 [*landlord's notice: non-payment of rent*];

(iii)section 47 [*landlord's notice: cause*];

(iv)section 48 [*landlord's notice: end of employment*];

(v)section 49 [*landlord's notice: landlord's use of property*];

(vi)section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii)section 50 [*tenant may end tenancy early*];

(b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c)the landlord and tenant agree in writing to end the tenancy;

(d)the tenant vacates or abandons the rental unit;

(e)the tenancy agreement is frustrated;

(f)the director orders that the tenancy is ended;

(g)the tenancy agreement is a sublease agreement.

(2)[Repealed 2003-81-37.]

(3)If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

There is no evidence before me that the tenancy ended in any of the circumstances outlined above. I do not accept the Landlord's testimony that the original tenancy ended and he and the Tenant entered into a new tenancy agreement when the Tenant's friend moved into the rental unit. This was expressly denied by the Tenant. Without corroborating evidence to support the Landlord's claim that the parties agreed in writing to end the tenancy, I am not persuaded this occurred.

The Landlord stated that he charged the Tenant an additional \$100.00 as his utilities increased when the Tenant's guest began staying at the rental unit. The Landlord also testified that prior to this, the Tenant was not permitted to have guests.

Section 9 of the Schedule to the *Residential Tenancy Regulation* prohibits a Landlord from including such restrictions in a tenancy agreement and reads as follows:

Occupants and guests

9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(2.1) Despite subsection (2) of this section but subject to section 27 of the Act *[terminating or restricting services or facilities]*, the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

The Landlord's prohibition against guests is expressly prohibited pursuant to the above.

Further, while a landlord can increase rent for additional occupants pursuant to section 13(2)(f)(iv) of the *Act*, this must be specifically provided for in the residential tenancy agreement. There was no evidence before me to support a finding that this Landlord had such authority.

A Landlord may not increase rent unless the rent increase is done in accordance with the *Residential Tenancy Act*, and the *Residential Tenancy Regulation*. Part 3 of the *Act* provides as follows:

Part 3 — What Rent Increases Are Allowed

Meaning of "rent increase"

40 In this Part, "**rent increase**" does not include an increase in rent that is

(a) for one or more additional occupants, and

(b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) *[requirements for tenancy agreements: additional occupants]*.

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.

(4) [Repealed 2006-35-66.]

(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 portions of the *Regulations* read in part as follows:

Part 4 — Rent Increases

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.

(2) For the purposes of section 43 (1) (a) of the *Act* [amount of rent increase], a landlord may impose a rent increase that is no greater than the percentage amount calculated as follows:

$$\text{percentage amount} = \text{inflation rate} + 2\%$$

(3) and (4) Repealed. [B.C. Reg. 234/2006, s. 17.]

[am. B.C. Reg. 234/2006, s. 17.]

In the case before me, the parties agreed the Landlord did not issue a Notice of Rent Increase in the approved form as required by section 42(3) of the *Act*. Further, the amount of the rent increase was \$100.00, which is more than the 2.5% increase permitted in 2019. As such, the Landlord collected a rent increase that did not comply with Part 3 of the *Act* and pursuant to section 43(5), the Tenant may deduct the increase from rent or otherwise recover the increase.

Accordingly, I find the Tenant is entitled to recover the amounts paid pursuant to the illegal rent increase and I award him compensation in the amount of **\$1,100.00** representing the \$1,000.00 in overpayment of rent (10 months x \$100.00) and recovery of the filing fee.

As the tenancy has ended the Tenant is granted a Monetary Order in the amount of **\$1,100.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Tenant's claim for return of rent paid pursuant to an illegal rent increase is granted. The Tenant is entitled to a Monetary Order in the amount of **\$1,100.00** which includes return of the \$100.00 additional rent paid for November 2019 and December 2019, and January- August 2020 as well as recovery of the \$100.00 filing fee.

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: February 10, 2021

Residential Tenancy Branch