



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damage or compensation under the *Act* and to recover the filing fee paid for this application. The matter was set for a conference call.

The Landlord, the Landlord’s wife, the Landlord’s legal Counsel (the “Landlord”), Tenant and the Tenant’s Advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony.

The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Tenant entitled to a monetary order for damage or compensation under the *Act*?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that this tenancy began on October 1, 2015, as a one-year fixed term tenancy that rolled into a month-to-month tenancy after the initial fixed term. The tenancy agreement recorded that rent in the amount of \$2,450.00 was payable on the first day of each month, and the Tenants paid a security deposit of \$2,450.00 at the outset of this tenancy. A copy of the tenancy agreement was submitted into evidence by the Tenant.

Both parties agreed that the Landlord issued a rent increase of \$300.00, effective October 1, 2016, and that the Tenant paid the new monthly rent amount of \$2,750.00 in accordance with the *Act* and the Tenancy Agreement. Both parties agreed that the Landlord had not issued the required rent increase form or provided the three-month notice period of this rent increase.

Both parties agreed that the Landlord issued a second rent increase of \$100.00, effective October 1, 2017 and that the Tenant paid the new monthly rent amount of \$2,850.00 in accordance with the *Act* and the Tenancy Agreement. Both parties agreed that the Landlord had not issued the required rent increase form or provided the three-month notice period of this rent increase.

Both parties agreed that the Landlord issued a third rent increase of \$100.00, effective October 1, 2018, and that the Tenant paid the new monthly rent amount of \$2,950.00 in accordance with the *Act* and the Tenancy Agreement. Both parties agreed that the Landlord had not issued the required rent increase form or provided the three-month notice period of this rent increase.

Both parties agreed that the Landlord issued a fourth rent increase of \$100.00, effective October 1, 2019, and that the Tenant paid the new monthly rent amount of \$3,050.00 in accordance with the *Act* and the Tenancy Agreement. Both parties agreed that the Landlord and Tenant signed a new one-year fixed-term tenancy agreement starting October 1, 2019. A copy of this tenancy agreement was submitted into evidence by the Tenant.

Both parties also agreed that they signed a mutual agreement to end this tenancy as of September 30, 2020, and that the Tenant moved out of the rental unit in accordance with that agreement.

The Tenant testified that they had been unaware that the rent increases issued by the Landlord during their tenancy had not been done in accordance with the *Act* and that when they became aware of the illegal rent increases, they decided to file for the recovery of all of the illegal rent paid for this tenancy.

The Tenant testified that the Landlord issued rent increase above the legally allowed amount, that the Landlord did not provide the required three-month notice period or the required written notice for any of the rent increases they issued during this tenancy. The Tenant is requesting the full recovery of all the rent paid above the original amount of rent agreed to in the tenancy agreement due to the Landlord's breach of the *Act*.

The Landlord testified that they had spoken to the Tenant each time they issued a rent increase and that they were only asking for a fair market rate for their rental property. The Landlord testified that they agreed that they had not issued the required rent increase notice form or provided the three-month notice period but that they had not understood at that time that they were required to do so.

The Landlord argued that they should not have to pay back the rent increases paid by the Tenant, as the Tenant willingly paid the increased amounts and that the Tenant never disputes the rent increases when they were issued.

The Tenant testified that at the time of the increase, they were not happy about them but that they did not know they could have disputed them at that time, nor did they want to upset the Landlord during their tenancy.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant is claiming compensation in the amount of \$21,600.00 to recover four illegal rent increases paid during their tenancy. Awards for compensation due to damage or losses are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove

their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

In order to determine if the Tenant is entitled to the recovery of these rent increases, I must first determine if there had been a breach of the *Act* by the Landlord in how these rent increases were issued. Section 42 of the *Act* states the following regarding rent increases:

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.

I accept the agreed-upon testimony of these parties that the Landlord did not issue a notice of rent increase on the approved form, nor did the Landlord provide the minimum

three months' notice period for any of the four rent increases they issued during this tenancy. Consequently, I find that the Landlord did breach sections 42(2) and 42(3) of the *Act* during this tenancy.

I have reviewed all of the documentary evidence before, submitted by both parties, and I find that the Landlord's breach of section 42 of the *Act* did result in a financial loss to the Tenant and that the Tenant has proven the value of that loss. Section 7(2) of the *Act* states the following regarding liability for a breach of this *Act*:

Liability for not complying with this Act or a tenancy agreement

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

(2) damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, the Tenant waited four years before they made an attempted look into their rights regarding rent increase, and they waited until their tenancy had ended before they filed to dispute all of the rent increase issued by this Landlord during their tenancy.

Where I can appreciate that it can be an uneasy prospect to bring legal action against one's current Landlord, this uneasiness does not relinquish a tenant's requirement to learn their rights as a tenant and to take timely action to enforce their rights during their tenancy.

Overall, I find that the Tenant breached section 7 of the *Act* when they wait over four years before filing to dispute these rent increases.

Furthermore, I find that the legal principle of estoppel applies to this claim. Estoppel is a legal doctrine that holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly. To return to strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

As shown above, I find that the Tenant established a pattern of not requiring the Landlord to issue a rent increase form or provide a notice period in accordance with the

Act, during this tenancy. I also find that the Landlord relied on this pattern throughout this tenancy. Additionally, as this tenancy has already ended, I find that it is too late for this Tenant to give notice to the Landlord that they are changing their conduct and are now going to strictly enforce the requirements for rent increase under the *Act*.

For the reasons stated above, I must dismiss the Tenant's claim for compensation in the amount of \$21,600.00 in its entirety.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been unsuccessful in their application, I find that the Tenant is not entitled to the return of their filing fee.

Finally, during these proceedings, it was clear that both these parties lacked a clear understanding of the *Residential Tenancy Act* of British Columbia. I strongly encourage both these parties to seek out assistance through either the Residential Tenancy Branch or private legal counsel, to gain the required understanding of their individual rights and responsibilities, as either a landlord or tenant, operating under the *Residential Tenancy Act* of British Columbia.

Conclusion

The Tenant's application is dismissed without leave to reapply.

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: March 12, 2021

Residential Tenancy Branch