



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNL, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on May 25, 2021, wherein the Tenant requested an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use, issued on May 11, 2021 (the "Notice") an Order that the Landlord comply with the *Residential Tenancy Act* (the "Act"), the *Residential Tenancy Regulation* (the "Regulations") and/or the residential tenancy agreement in terms of the rent increases imposed on the Tenant, and to recover the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on September 27, 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 were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

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.

Preliminary Matter

At the outset of the hearing the parties confirmed the Landlord withdrew the Notice such that the parties agreed the tenancy shall continue until ended in accordance with the *Act*.

Issues to be Decided

1. Should the Landlord be Ordered to comply with the *Act*, the *Regulations*, and/or the tenancy agreement?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that he moved into the rental unit July 2011. Rent was \$1,075.00 per month and utilities were included in the rent at the time. Approximately 4 years ago the Landlord asked the Tenant to pay an additional \$175.00 towards utilities, to which the Tenant agreed. The Tenant confirmed that the \$175.00 included payment for all utilities including: heat, hydro, hot water, water sewer and garbage. The Tenant stated that the rental home has gas, although he does not believe his unit uses the gas utility.

The Tenant testified that approximately six months ago (when new renters moved in upstairs) the Landlord asked the Tenant to pay \$50.00 more. The Tenant opposes paying \$50.00 more as requested by the Landlord and filed this application requesting an Order that the Landlord not increase his rent unless in accordance with the *Act* and the *Regulations*.

The Landlord responded to the Tenant's claim as follows. He confirmed the tenancy began July 2011. He claimed there was a residential tenancy agreement, which he stated he had "in his file" yet did not submit the document in evidence before me.

The Landlord testified that the Tenant pays \$1,075.00 in rent. He claimed the Tenant agreed to pay an additional \$175.00 in rent, because four and a half years ago the Tenant was "ready to move out" but never moved, and then renegotiated the rent to pay \$175.00 more. He denied the \$175.00 had anything to do with utilities at the time.

The Landlord further testified that the Tenant and the upstairs renters agreed approximately a year ago that the Tenant would pay an additional \$50.00 more for hydro and gas. He noted that the entire house is heated by a boiler which runs on gas.

The Landlord also stated that the upstairs renters want to take over the entire home. He then stated that the city wanted the suite not to be rented.

The Tenant replied that four years ago the Landlord told him the \$175.00 was for utilities, not additional rent. He stated that the Landlord asked him to move out previously, but the Tenant never moved out, and he agreed to pay the \$175.00 as he was worried about being evicted. The Tenant denied the Landlord's claim that he agreed to pay \$50.00 more per month in rent.

Analysis

After consideration of the testimony and evidence of the parties, and upon a balance of probabilities, I find as follows.

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.]

The Tenant stated that he agreed to a rent increase of \$175.00 approximately four years ago and that this amount was to represent his contribution to utilities at the rental property. The Landlord denies this increase was related to utilities and asserts it was for increased rent when the tenancy ended and began again. While the increase exceeds the allowable amount at the time, I find the Tenant agreed to this rent increase pursuant to section 43(1)(c) of the *Act*, such that the rent increase is allowable. I also find that this rent increase included the Tenant's contribution to utilities such that the Landlord is not permitted to charge the Tenant additional sums for utilities.

The Landlord alleges the Tenant and the upstairs renter agreed the Tenant would pay an additional \$50.00 per month for utilities. The Tenant disagrees and says this is another attempt by the Landlord to raise the rent.

I accept the Tenant's testimony that he did not agree to a further rent increase. I find that this is a further attempt by the Landlord to raise rent contrary to the *Act* and *Regulations*, as well as during the "rent freeze" mandated during the Covid-19 State of Emergency. I therefore grant the Tenant's request and Order, pursuant to section 62(3) as follows:

1. The Tenant is obligated to pay monthly rent in the amount of \$1,250.00. This sum shall include the Tenant's contribution to all utilities.
2. The Landlord may not request further contribution from the Tenant for utilities and may only raise the Tenant's rent in accordance with the *Act* and the *Regulations*.
3. In the event the Tenant has paid more than \$1,250.00 per month in rent, he is entitled to recovery of the overpayment pursuant to section 43(5) of the *Act*.

Having been successful in his Application, the Tenant is also entitled to recover the \$100.00 filing fee. In furtherance of this he may reduce his next months' rent by \$100.00.

I also caution the Landlord that he may not raise rent as an attempt to end this tenancy. Nor may he end this tenancy to permit the upstairs renters use of the entire home. Further, he may only end the tenancy pursuant to section 47(1) (k) the rental unit must be vacated to comply with an *order* of a federal, British Columbia, regional or municipal government authority.

Conclusion

The Landlord withdrew the Notice and the parties agreed the tenancy would continue until ended in accordance with the *Act*.

The Tenant's request for an Order that the Landlord comply with the *Act*, the *Regulations* and/or the residential tenancy agreement is granted. The Landlord may not raise the Tenant's rent above \$1,250.00 unless the increase is done in accordance with the *Act* and the *Regulations*. The Tenant's rental payment of \$1,250.00 includes his contribution for all utilities. Any payment above \$1,250.00 per month is recoverable from the Landlord and the Tenant may reduce his rent accordingly.

The Tenant's request to recover the filing fee is granted. The Tenant may reduce his next months' rent by \$100.00 to recover this sum.

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 13, 2021

Residential Tenancy Branch