



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant disputing a rent increase, and seeking an order cancelling a notice to end the tenancy for cause, and to recover the filing fee from the landlords for the cost of the application.

The tenant attended the hearing with another person to assist, who did not testify or take part in the hearing. The landlords both attended and were represented by an agent. The tenant and the landlords' agent each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The tenant has not provided any evidentiary material, and advised that some of the landlords' evidence was missing from the package of evidence served to the tenant. The landlords' agent advised that it was provided by email in July, 2021 and the landlords' agent showed the tenant how to retrieve the documents. The tenant did not dispute that but is not computer literate. I accept the testimony of the landlords' agent and all evidence provided has been reviewed and is considered in this Decision.d

Issue(s) to be Decided

- Has the tenant established that rent has been increased contrary to the law?
- Have the landlords established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?

Background and Evidence

The tenant testified that the tenancy began near the beginning of 2016 on a month-to-month basis and the tenant still resides in the rental unit. Rent in the amount of \$1,350.00 was originally payable on the 1st day of each month, which has been increased over the years, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$675.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a full house.

The tenant further testified that the landlords increased rent to \$1,450.00 per month by giving the tenant a letter which is not dated and not in the approved form. The tenant found out that only a percentage could be increased each year. The first year was good, but through COVID no increases were allowed. In February, 2017 the tenant started paying \$1,450. The following year in February, 2018 another increase in rent of \$100.00 was imposed bringing the rent to \$1,550.00 for another year. The same happened in February, 2019 raising it to \$1,650.00. The landlord told the tenant to start paying an extra \$100.00 three times. However, the tenant has only been paying \$1,420.00 for the last 3 months.

The tenant claims \$100.00 per month for the overpayment of rent.

The tenant's application indicates that the tenant received a One Month Notice to End Tenancy for Cause which was delivered in person on July 2, 2021. A copy has not been provided for this hearing.

The landlords' agent testified the landlords believed the tenant had provided a copy of the One Month Notice to End Tenancy for Cause, and the landlords did not upload it. The landlords' agent provided evidence to the tenant by email, and assisted with opening it.

The landlords' agent further testified that that there have been increases as follows:

- the tenant moved in on January 1, 2016 and rent was \$1,350.00;
- December, 2016 a letter was provided to the tenant increasing rent to \$1,450.00 commencing January, 2017;
- Another notice to increase rent was given effective January, 2018 to \$1,500.00;

- Another increase was imposed in 2019 effective January, 2020 to \$1,550.00;
- Another increase of \$50.00 was effective for January, 2021, bringing the rent amount to \$1,600.00 per month;
- Rent is now \$1,600.00 per month.

The landlord's agent further testified that for the months of August through November, 2021 the tenant has paid \$1,420.00 per month.

A copy of a tenancy agreement has been provided for this hearing, which is hand-written on a form and contains the name of the tenant, location of the rental unit, date and number of occupants. It contains 6 terms as follows:

1. Before vacating the premises, at least one month's notice must be given.
2. No loud music after 10 p.m.
3. No pets allowed.
4. Landlords can come inspect the premises every two months.
5. No loud parties.
6. The rent should be given on the 26th of every month or on an arranged date with the landlord.

It also contains signatures, and states in hand-writing: "rent 1350 every month."

The landlords have also provided a copy of a letter addressed To Whom It May Concern stating that rent increases from \$1350 per month to \$1450 per month and appears to have 2 or more signatures. The landlords' agent testified that the tenant signed the consent.

Numerous photographs of the rental unit and property have also been provided for this hearing by the landlords. The landlords' agent testified that there are numerous repairs that need to be done and damages caused by the tenant, multiple people living in the rental unit, damage caused by pets and water damage which has devalued the landlords' home.

Analysis

Firstly, no one has provided me with a copy of the notice to end the tenancy. A tenant who disputes a notice given by a landlord is required to provide a copy of it. The hearing did not deal with the notice because there is no notice to rule upon. The Residential Tenancy Branch Rules of Procedure require that:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

When submitting applications using the Online Application for Dispute Resolution, **the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days** of submitting the Online Application for Dispute Resolution.

In this case, the tenant has not provided a copy of any notice ending the tenancy and I dismiss the tenant's application to cancel it.

The *Residential Tenancy Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Since no one has provided a copy, I am not satisfied that any given was in the approved form, and I decline to issue an Order of Possession.

I am not satisfied that the written tenancy agreement contains all of the standard terms as set out in the *Act* and the regulations. However, the *Residential Tenancy Act* also states that even if not in writing a tenancy agreement exists with the standard terms. In this case, I find that a month-to-month tenancy began on January 1, 2016 for rent in the amount of \$1,350.00 payable on the 26th day of each month, and a security deposit in the amount of \$675.00.

A landlord may increase rent annually, except during COVID restrictions, but must give the tenant at least 3 months notice and it must be in the approved form. The law also states that the increase cannot be more than a certain percentage which changes annually.

In this case, the landlords have collected several rent increases which are contrary to the law. The tenant testified that the increases have been \$100.00 per month each year but has not provided any evidence about that. I prefer the testimony of the landlords' agent who described the rent increases and when they were effective. I find that the tenant made overpayments of rent as follows:

Date	Amount of Rent Payable	Rent Paid	Overpayment for the year	Total Overpayments
January 2016	\$1,350.00	\$1,350.00	0	0
January 2017	\$1,350.00	\$1,450.00	\$1,200.00 (\$100.00 / mon)	\$1,200.00
January 2018	\$1,350.00	\$1,500.00	\$1,800.00 (\$150.00 / mon)	\$3,000.00
January 2020	\$1,350.00	\$1,550.00	\$2,400.00 (\$200.00 / mon)	\$5,400.00
January to July 2021	\$1,350.00	\$1,600.00	\$1,750.00 (\$250.00 / mon)	\$7,150.00
August to November, 2021	\$1,350.00	\$1,420.00	\$280.00 (\$70.00 / mon)	\$7,430.00

I grant a monetary order in favour of the tenant in the amount of \$7,430.00.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application to cancel a notice to end the tenancy is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$7,530.00.

This order is final and binding and may be enforced.

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: November 12, 2021

Residential Tenancy Branch