



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, FFT

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 3, 2021 (10 Day Notice), to dispute a rent increase for a monetary claim of \$11,751.64 and to recover the cost of the filing fee.

The landlords, the tenants, an agent for the tenants, JR (agent) and a support person for the tenants, CW (support) attended the teleconference hearing. The hearing was held by telephone conference call and began promptly at 1:31p.m., Pacific Time, on this date, January 10, 2021. The parties were affirmed and an opportunity to ask questions was provided to the parties.

Neither party raised any concerns regarding the service of documentary evidence. As a result, I find the parties were sufficiently served. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the tenants confirmed their email address at the outset of the hearing. The landlords stated that they do not have an email address. As a result, the decision will be emailed to the tenants and sent by regular mail to the landlords.

RTB Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 10 Day Notice. 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 tenants' request to cancel the 10 Day Notice and for the filing. The balance of the tenants' application is **dismissed, with leave to re-apply.**

Issues to be Decided

- Should the 10 Day Notice be cancelled?
- If yes, are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on December 2, 2013. Monthly rent was originally \$850.00 per month and is due on the first day of each month.

The landlords were unsure how many times they served a Notice of Rent Increase (Rent Increase) form on the tenants. Submitted in evidence was a Rent Increase form dated June 20, 2016 and indicates that \$850.00 in rent will increase by \$50.00 to \$900.00 as of October 1, 2016 (First Rent Increase). The parties were advised that the First Rent Increase was not in keeping with the Act the maximum rent increased for 2016 was 2.9%, which would have made the maximum rent increase **\$24.65 versus \$50.00**. As a result, the parties were advised that the 2016 rent increase was not enforceable under the Act.

Given the above, the landlord will first have to prove that rent was owing and then the tenants will have to provide, if rent was found to be owing, that they failed to dispute the 10 Day Notice on time and paid any amount owing.

The tenants claims that they have overpaid rent in excess of \$11,000.00, which I will not be determining at this proceeding, and for which they have leave to reapply for compensation against the landlords.

The landlords stated that monthly rent is now \$1,300.00 and that tenant DF pays \$650.00 of that amount, with tenant SP paying the other \$650.00 and that the Ministry paid the landlords directly up until August 2021. The landlords testified that as of September 2021, the Ministry was paying the tenants DF and SP directly and that the tenants were to pay the landlords from that point forward.

The parties disagree with how much rent has been paid. The landlords write on the 10 Day Notice that the tenants failed to pay \$250.00 of November 2021 rent due November 1, 2021. The tenants disputed the 10 Day Notice on November 4, 2021, which is the day after receiving the 10 Day Notice.

The tenant testified that the full amount of \$1,300.00 was finally paid for November 2021 rent on November 8, 2021, with the remaining \$250.00 paid in cash on November 8, 2021. The landlords testified that it was not until November 9, 2021, that the tenant paid the remaining \$250.00 owed for November 2021. The landlords testified that the tenants have since failed to pay \$650.00 for December 2021 and \$650.00 for January 2022 since the 10 Day Notice was issued.

The landlords failed to provide supporting evidence that monthly rent was increased to \$1,300.00 in a method approved under the Act.

Analysis

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

Firstly, I find the landlords have the onus to prove what the monthly rent is and what amount is owing on the 10 Day Notice. Secondly, once that has been established, I find the tenants have the onus to prove that the monthly rent has been paid once served with the 10 Day Notice.

In the matter before me, as the First Rent Increase form dated June 20, 2016 was for \$50.00, **which exceeds the \$24.65 permitted amount by \$25.35**, I find the landlords have failed to provide sufficient evidence to support that monthly rent was ever increased to \$1,300.00 in a method approved under the Act.

Given the above, I find that the tenants may not actually owe any rent given the insufficient evidence before me that current monthly rent was increased to \$1,300.00 in a method approved by the Act.

Given the above, I **cancel** the 10 Day Notice as I find the landlord's have failed to prove that any rent was owed as of November 1, 2021, given that the original tenancy agreement indicates that monthly rent was \$850.00 per month and the June 2016 First Rent Increase form exceeded the 2.9% permitted amount.

As the tenants' application had merit, I grant the tenants the recovery of the \$100.00 filing fee. I **authorize** the tenants a one-time rent reduction in the amount of **\$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee, pursuant to section 72 and 62(3) of the Act.

I make no determination on what the monthly rent currently is as the tenant's have been granted leave to reapply for monetary compensation based on a disputed rent increase.

The tenants claimed the home will be sold by March 2022, which the landlords denied during the hearing.

Conclusion

The tenant's application is successful. The 10 Day Notice is cancelled and has no force or effect. The tenancy shall continue until ended in accordance with the Act.

The tenants are granted a one-time rent reduction of \$100.00 as noted above.

This decision will be emailed to the tenants and sent by regular mail to the landlords.

This decision is final and binding on the parties, except as 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 10, 2022

Residential Tenancy Branch