



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use (the Notice), issued pursuant to section 49;
- an order to dispute a rental increase, pursuant to section 43.

Both parties attended the hearing. The tenant was assisted by advocate KV and the landlord was assisted by advocate MC. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Is the tenant entitled to:

- cancellation of the Notice?
- an order to dispute a rental increase?

Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started on July 15, 2020 and the tenant is currently occupying the rental unit. Monthly rent is \$2,800.00, due on the 15th day of the month. The tenant affirmed the landlord collected a security deposit of \$3,800.00. The landlord affirmed she collected a security deposit of \$1,000.00. A copy of the tenancy agreement was submitted into evidence. It indicates that monthly rent is \$2,800.00 and the security deposit is \$2,800.00.

Both parties agreed the landlord served and the tenant received a letter on September 21, 2021:

This letter is to inform you that I will give you a 4 month notice to end the tenancy for [tenancy address] . It will end on January 15, 2022. The rental house will be using for our elderly parents. The tenant will agree to pay \$2800.00 until the end of tenancy, maintain the cleanliness and responsible for damage.

The landlord affirmed she did not serve an eviction notice.

The tenant affirmed the landlord asked to increase rent to \$3,200.00 in July 2021 and later she asked to increase rent to \$3,500.00. The tenant submitted into evidence text messages:

July 02, 2021 - Landlord: I have to increase rent when you u come back to \$3,200.00 I will send u the new contract through email. And sign pls.

Tenant: You told me you would increase to \$3,000 dollars.

September 17, 2021 – Landlord: On January you have to pay now \$3,500/month If u not agree. U have 3 months to decide. And find another home. Lets talk on December.

The landlord affirmed he was not aware that rent can only be increased by 1,5% when he sent the text messages.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

I accepted the uncontested testimony that the tenants received the letter on September 21, 2021.

Section 49 of the Act states:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy:

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

[...]

(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

(emphasis added)

Section 51(1) of the Act states:

A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the

landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 52 of the Act states:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
- (e) when given by a landlord, be in the approved form.**

(emphasis added)

Based on the landlord's testimony, I find the landlord did not serve a notice in the approved form. The letter served on September 21, 2021 is not a valid notice, as it does not comply with section 52 (e) of the Act.

Sections 41, 42 and 43 of the Act state:

41 A landlord must not increase rent except in accordance with this Part.

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.

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.

(emphasis added)

The landlord is subject to section 43(1) of the Act.

In accordance with section 22 of the Regulation, the maximum allowable rent increase for 2022 is 1.5% (<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases>).

Based on the testimony offered by both parties and the tenancy agreement, I find that monthly rent is \$2,800.00. The landlord did not serve a notice of rent increase. The landlord cannot increase rent by more than 1.5%.

Conclusion

The letter dated September 21, 2021 does not meet the requirements of section 52. The tenancy continues until it is ended in accordance with the Act.

Monthly rent is \$2,800.00.

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 09, 2022

Residential Tenancy Branch