Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FFT

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:

- an order to dispute a rental increase, pursuant to section 43; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by agent SK (the landlord). The tenant was assisted by interpreter HK. 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:

- an order to dispute a rental increase?
- an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony 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 tenant's obligation to present the evidence to substantiate the application.

Both parties agreed they entered into a fixed-term tenancy from August 10, 2021 to January 31, 2023. Monthly rent is due on the first day of the month. At the outset of the tenancy a security deposit of $1,000.00 was collected and the landlord holds it in trust.

The tenancy agreement dated June 28, 2021 was submitted into evidence. It states monthly rent is $2,000.00 and the occupants of the rental unit are the tenant and her child MK. The parties signed a second tenancy agreement dated August 10, 2021. The only differences are that monthly rent is $2,200.00 and the occupants are the tenant and her children MK and JK (the third occupant). Both contracts have the same conditions regarding registered occupants (clause 8):

> Registered occupants:
> […]
> A person not listed above who resides in the rental suite for a period in excess of fourteen (14) cumulative days in any calendar year will be considered to be occupying the rental suite contrary to this agreement and without the right or permission of the landlord. A tenant anticipating an additional person to occupy the rental suite must promptly apply in writing for permission from the landlord for such a person to become an authorized occupant. Failure to apply and obtain the necessary written approval of the landlord in writing is a breach of a material term of this agreement, giving the landlord the right to end the tenancy on proper notice.

Both parties agreed the tenant paid rent in the amount of $2,200.00 since September 2021 and the tenant has been occupying the rental unit with MK and the third occupant. The rental unit is a one bedroom, 600 square feet apartment.

The tenant claims that the August 10, 2021 tenancy agreement was signed under duress, monthly rent should be $2,000.00 and she should receive $1,600.00 for the amount of rent overpaid ($200.00 per month from September 2021 to April 2022).

The tenant hired an agent overseas to assist her regarding rental issues, as she was moving to Canada. The tenant affirmed that her agent mistakenly did not inform the landlord that there would be three occupants. The tenant assumed that the third occupant would not be a breach of the contract, as the third occupant is a 22-month baby.

The tenant stated the landlord learned about the third occupant on the move in inspection and informed her that she would have to move out in ten days because of the third occupant. The tenant had to quarantine because of the pandemic.

The landlord testified that he explained to the tenant that the owner would have to approve the third occupant, per clause 8 of the tenancy agreement signed on June 28, 2021. The landlord believes he did not say the tenant would have to move out in ten days, but usually when there is a breach of a tenancy agreement the landlord serves a ten day notice to end the tenancy. Later, the landlord proposed to sign the August 10, 2021 tenancy agreement, authorizing the third occupant and increasing rent by $200.00, and the tenant agreed.

The tenant signed the August 10, 2021 tenancy agreement because she was under duress and afraid.

The tenant said that the rent increase of $200.00 is burdensome and unfair, as there is no extra cost for the landlord because of the third occupant.

The landlord affirmed the landlord's insurance premium is higher because of the third occupant and the rental unit has more wear and tear.

The tenant received compensation from her agent in the total amount of $1,200.00 for the higher amount of rent and promised to return this amount to her agent if she is successful in this application.

I note that during the 61-minute hearing the tenant was assisted by her interpreter. However, the tenant communicated in English during part of the hearing and directly answered in English most of my questions.

Analysis

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.

Duress of coercion refers to situations where a person performs an act as a result of violence, threat or other pressure against the person. Duress is pressure exerted upon a person to coerce that person to perform an act that he or she ordinarily would not perform.

Justice Rogers writes in Stein v. Schommer, 2006 BCSC 1551:

> [16]There is nothing in Mr. Schommer's evidence that could possibly underwrite the classic elements of the defence of duress. However, the common law is a living thing, and in the years since Saxon, the circumstances under which duress might be said to exist have evolved. There is now a variant of the defence called "economic duress". The Ontario Court of Appeal described the test for this sort of thing in Stott v. Merit Investment Corp. (1988), 1988 CanLII 192 (ON CA), 63 O.R. (2d) 545, at p. 561:
>
> The term "economic duress" as used in recent cases, particularly in England, is no more than a recognition that in our modern life the individual is subject to societal pressures which can be every bit as effective, if improperly used, as those flowing from the threats of physical abuse. It is an expansion in kind but not class of practices that the law already recognizes as unacceptable such as those resulting from undue influence or from persons in authority. **But not all pressure, economic or otherwise, is recognized as constituting duress. It must be a pressure which the law does not regard as legitimate and it must be applied to such a degree as to amount to "a coercion of the will", to use an expression found in English authorities, or it must place the party to whom the pressure is directed in a position where he has**

> **no "realistic alternative" but to submit to it,** to adopt the suggestion of Professor Waddams…
>
> [17] That test has been referred to with approval by this court: Atkinson v. Klassen et al., 2000 BCSC 1831.
>
> (emphasis added)

Based on the tenant's more convincing testimony, I find the landlord informed the tenant that she would have to move out in ten days because of the third occupant.

The landlord did not serve a notice to end tenancy. The tenant hired an agent to assist her regarding rental issues. Clause 8 of the rental agreements, signed on June 28, 2021, clearly states the landlord may give a notice to end tenancy if there is an extra occupant. The tenant occupied the rental unit 42 days after signing the first rental agreement.

I find the landlord exercised pressure against the tenant by informing that she would have to move out in ten days because of the third occupant. However, I find this pressure is not enough to constitute duress. As stated in Stein v. Schommer, 2006 BCSC 1551, not all pressure is recognized as duress.

While I do not expect the tenant to be fully aware of the residential tenancy legislation of British Columbia, the tenant could have read the rental agreement and asked for help from her agent instead of signing the August 10, 2021 tenancy agreement.

I find the tenant failed to provide evidence that she suffered a violence, threat of pressure so strong that forced her to sign the August 10, 2021 agreement under duress.

Thus, I find the August 10, 2021 tenancy agreement is a valid new tenancy agreement that established a rent $200.00 higher because there is a third occupant in the rental unit. I find the tenant failed to prove, on a balance of probabilities, that the landlord breached section 41 of the Act. I dismiss the tenant's claim.

As the tenant was not successful, the tenant must bear the cost of the filing fee.

For the purpose of educating the landlord, I note that the landlord may terminate a tenancy for breach of a material term by serving a one month notice to end tenancy under section 47 of the Act, not a ten day notice to end tenancy.

Conclusion

I dismiss the tenant's claim 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: May 02, 2022

Residential Tenancy Branch