



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI

Introduction

This hearing dealt with the Tenant's application under the Residential Tenancy Act (the "Act") to dispute a rent increase above the amount allowable under the Act pursuant to section 41.

The Landlord and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

The parties did not raise any issues with respect to the service of documents. The Landlord confirmed receipt of the Tenant's notice of dispute resolution proceeding package and evidence. The Tenant confirmed receipt of the Landlord's evidence.

Issue to be Decided

Has the Landlord increased rent above the amount allowable under the Act?

Background and Evidence

The rental unit is the downstairs suite of a house. The Landlord and his family reside on the upper floor.

This tenancy commenced on April 1, 2021 and is currently month-to-month. Rent is \$1,500.00 due on the first day of the month. A copy of the tenancy agreement has been submitted into evidence.

The tenancy agreement includes a page titled "Utilities Agreement" which is signed by the Tenant at the bottom. This page states as follows (portions redacted for privacy):

1. *The tenant ([Tenant name]) agrees to pay a utility payment of 40% for the downstairs suite only UNLESS the upper suite is unoccupied then the downstairs tenant ([Tenant name]) is responsible for 95% of the utilities for the whole house each month which is payable to the landlord ([Landlord name]) This payment is to accompany the standard monthly rent payment for the purposes of being applied to collective utilities accumulated at the aforementioned address.*

These utilities include: Hydro, Water, Garbage

2. *The tenant understands that the landlord reserves the right to adjust the monthly utility payment, 30 days notice to the tenant, in the event that:*
 - a. *the utility bills increase;*
 - b. *the utility bills decrease; or*
 - c. *there are additional persons not on the Residential Tenancy Agreement and/or addendum residing at the premises.*

The 30-day notice of utility payment increase will be given in writing to the tenant in accordance with the rules that govern serving documents under the Residential Tenancy Act of British Columbia.

3. *The tenant understands that their failure to provide a utility payment is to be treated as an outstanding arrears amount that can be recoverable by the landlord from the tenant just as if it were rent owing. This is at the sole discretion of the landlord.*

4. *The tenant understands that failure to pay their utility payment constitutes a breach of their rental contract and is grounds for eviction.*
5. *This agreement shall remain in effect until either the end of the tenancy or at such time as a new agreement is signed to replace this one.*

The Tenant testified he made this application because the 60-40 split for utilities had been a fair representation of the usage at the start of the tenancy, but is no longer fair due to a change of occupants at the rental property.

The Tenant testified that he originally moved into the downstairs suite with his two children, while the upstairs suite was occupied by a tenant and her adult son. The Tenant testified that one of his children has since moved out of the rental unit and the Landlord has moved his family of six into the upstairs suite.

The Tenant testified that the utilities usage has been considerably higher since the Landlord's family moved in. The Tenant testified that at the start of the tenancy, he was told that the Landlord and his family might use the upstairs suite intermittently, not that they would move in full-time.

The Tenant testified that his own usage has declined due to spending the winter away from the rental unit. The Tenant testified that he uses "minimal" power, and only had laundry three days of the week.

The Tenant testified that the Landlord also uses an enclosed garage downstairs as a workshop.

The Tenant argued that his girlfriend lives in a considerably larger unit but pays "at most \$30.00" a month for utilities. The Tenant acknowledged he has not calculated what his monthly utilities cost is based on the invoice he received from the Landlord, but that it is in "hundreds".

The Tenant stated that he wanted a utility agreement that is more accurate. The Tenant testified he had repeatedly asked for the Landlord to prepare a fair offer given how the occupancy has changed.

The Tenant submitted a copy of a utilities invoice from the Landlord dated April 4, 2022.

The Tenant also submitted text messages with the Landlord dated August 18, 2021 in which the Tenant had agreed to pay 90% of the hydro bill at the Landlord's request. The Tenant argued that the text messages set a precedent for utilities being varied based on use.

In response, the Landlord testified that the 60-40 split was based on the upper suite and lower suite floor plan, as well as the shared laundry space. The Landlord submitted a copy of the floor plan for the property, which shows that the upper suite is a 3-bedroom unit and the lower suite is a 2-bedroom unit.

The Landlord testified that he does repairs in the garage and that the garage is not a heated or insulated space. The Landlord testified that the last payment the Tenant had made towards utilities was on January 13, 2022.

The Landlord testified he had explained to the Tenant that the utilities are higher due to the fact that the house primarily uses baseboard heating. The Landlord testified this was the Tenant's first winter in this tenancy. The Landlord argued that the Tenant's girlfriend's utilities is a separate issue as utilities consumption in a condo would be different from in a standalone house.

The Landlord testified that he took possession of the rental property in June 2020. The Landlord explained that he had submitted a Freedom of Information request to BC Hydro to obtain past usage information. The Landlord submitted a spreadsheet showing data from 2019. The Landlord argued that the data shows that electricity consumption has been consistent since before the Tenant moved in.

The Landlord submitted copies of the utility bills into evidence. The Landlord also submitted a signed statement in support of his submissions.

Analysis

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.

Sections 41, 42, and 43 of the Act state as follows:

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 2022 maximum rent increase is 1.5%.

The Act defines “rent” to include “money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities”.

Based on a review of the evidence before me, I do not find the Landlord to have increased rent illegally in this case.

I find the parties have agreed to a fixed 60-40 split of the utilities as per the terms of the Utilities Agreement, which I find to be a part of the parties’ tenancy agreement. I accept the Landlord’s evidence that the 60-40 split is based on the floor plan of the two suites. I find that the fact that the parties have deviated from this split once in August 2021 by consent to not affect the continued application or validity of the Utilities Agreement terms.

I further find that the terms of the Utilities Agreement do not give the Tenant any right to ask for a downward adjustment of the utilities split based on changes in occupancy. However, I find the terms provide for an upward adjustment in the form of requiring the Tenant to pay 95% of the utilities to the Landlord if the upper suite is unoccupied. I find that it was open to the Tenant to negotiate an occupancy-based term for a downward adjustment of the utilities split prior to signing the tenancy agreement. I find that since the Tenant had not done so, the Tenant is bound by the terms as they are stated. Furthermore, I do not find the parties’ tenancy agreement to contain any representations by the Landlord about a maximum occupancy or usage for the upper suite, and I do not consider any verbal representations to be part of the tenancy agreement as per the parol evidence rule.

Moreover, I find the Tenant has not provided sufficient evidence to demonstrate that the utilities consumption or costs claimed by the Landlord are unreasonable.

Accordingly, I conclude that the Tenant has not established on a balance of probabilities that the Landlord has raised rent illegally. I order that the Tenant’s application be dismissed without leave to re-apply.

Conclusion

The Tenant’s application is dismissed without leave to re-apply.

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: August 12, 2022

Residential Tenancy Branch