



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, MNDCT, DRI**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act ("Act") for orders as follows:

- cancellation of the landlords 10 Day Notice to End Tenancy ("10 Day Notice") pursuant to section 46
- for a monetary order for damage or compensation pursuant to section 67 of the Act
- cancellation of a rent increase pursuant to section 41 of the Act

Both parties attended the hearing with the landlord represented by KM, while the tenant was represented by tenant RG along with a witness RK. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the 10 Day Notice dated October 28, 2022. Pursuant to section 89 of the Act the tenant is found to have been served with this notice in accordance with the Act.

The landlord testified that they received the tenant's dispute notice and evidence package and based on that evidence I find they were duly served in accordance with sections 88 and 89 of the Act. The landlord did not file materials.

At the outset the tenant advised they have vacated the rental unit, and therefore are no longer disputing the 10 Day Notice.

Issue(s) to be Decided

1. Is the tenant entitled to a monetary order for compensation?
2. Did the tenant receive an illegal rent increase?

Background and Evidence

There is no written tenancy agreement. The parties stated that the tenancy commenced approximately 10 years ago and there is agreement that the tenancy commenced in September 2011. Rent was initially \$600.00 per month due on the first day of the month. The tenant ended the tenancy November 30, 2022.

The landlord stated that rent was \$600.00 per month and the rent did not increase during the tenancy. The landlord is still owed \$500.00 as of the end date of the tenancy, November 30, 2022.

The tenant alleged that the landlord increased the rent twice during the tenancy. The first rent increase was in October 2021 when the landlord notified the tenant that the rent had increased to \$800.00 per month. The second rent increase occurred in April 2022 to \$1,200.00 per month but the landlord ultimately agreed to increase the rent to \$1,000.00 per month. The tenant always paid rent in cash. The tenant provided bank statements highlighting the dates when withdrawals for rent were made. The tenant stated that he was not given notice for either rent increase.

The landlord stated that she stopped providing rent receipts after two years based on a mutual agreement of the parties.

Analysis

Section 26 of the Act states in part:

(2)A landlord must provide a tenant with a receipt for rent paid in cash.

It is a mandatory requirement and the landlord cannot choose not to comply with this provision of the Act.

I have examined the evidence of the bank statements provided by the tenant. I find that the evidence establishes that the tenant made regular cash withdrawals at the end of

the month from a bank account. I further note that some of the withdrawals were comprised of two separate withdrawals during the month, and the tenant has identified which withdrawals were for rent. The evidence that the tenant has provided in terms of bank statements establishes that he initially paid rent in the amount of \$600.00 per month, there was a rent increase in October 2021 of \$200.00 per month for a total rent of \$800.00 per month, and the rent was further increased to \$1,000.00 per month as of April 2022.

The landlord testified that rent was \$600.00 per month during the term of the tenancy.

Section 42 of the Act states in part:

(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.

I prefer the evidence of the tenant and find that the tenant has established that the landlord increased rent \$200.00 per month in October 2021 and a further \$200.00 per month in April 2022 without giving the tenant three months' notice as required under section 42 of the Act. The tenant's application for compensation is granted. The tenant is entitled to a monetary order pursuant to section 67 of the Act of \$4,400.00 representing overpayment of rent from October 1, 2021, to November 30, 2022 calculated as follows:

| Rent increase | Amount |
|---|-------------------|
| October 2021-March 2022 (6X \$200.00) | \$1,200.00 |
| April 2022 – November 2022 (8 X \$400.00) | \$3,200.00 |
| Total | \$4,400.00 |

Conclusion

The tenant is granted a monetary order for \$4,400.00 in recovery of the rent overpayment. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 10, 2023

Residential Tenancy Branch