



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes LRE DRI OLC

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and for an order to set limits on the landlord's right to enter the rental unit, site or property.

The tenant and an agent for the landlord, SD (agent) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

A copy of the tenancy agreement was submitted in evidence. The tenant named two landlords, although only landlord BY (landlord) was listed on the tenancy agreement. Therefore, I have amended the application pursuant to section 64(3)(c) to change the name of SD as agent for landlord BY.

In addition, and based on the wording of the tenant's application, I interpret and amend the application pursuant to section 64(3)(c) of the Act to include dispute code "DRI", as I

find the tenant clearly indicates that they are also disputing a rent increase under the Act.

Although the agent requested to discuss multiples notice to end the tenancy, the agent was advised that this hearing was not scheduled as a landlord application and as a result, the landlord has no application properly before the undersigned arbitrator. The agent has liberty to apply for dispute resolution under the Act.

Issues to be Decided

- Has the tenant provided sufficient evidence to prove that the landlord should be directed to comply with the Act, regulation, or tenancy agreement?
- Has the tenant provided sufficient evidence to support an order setting limits on the landlord's right to enter the rental unit?
- Has the tenant provided sufficient evidence to dispute a rent increase?

Background and Evidence

Throughout the hearing, the agent was disrespectful, used foul language, was hostile and continuously interrupted the tenant and the undersigned Arbitrator even after warning to cease doing so. Therefore, pursuant to RTB Rule 6.10 the agent was muted throughout the hearing and only unmuted when specifically needed to answer a question and was overheard saying "this fucking guy" and "I will do what I want." I find that the agent was attempting to intimidate both the tenant and the Arbitrator and according, I will provide information regarding the RTB Compliance and Enforcement Unit (RTB CEU) later in this decision.

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on March 1, 2020. Monthly rent is \$390 per month and due on the first day of each month.

The tenant writes the following in their application:

He is threatening me that he will damage my things. He is threatening me that he will throw my stuff away. I don't feel secure if he can come without my permission. I have his text messages. he warns me to change the lock. He is treating me saying m mentally ill. He always resist.

...

He is sending me threatening messages. He wants to kick me out. On June 13 he sent me mail to increase my rent from \$415 to \$490. I don't want trouble, since I am a working lady. So I increased the rent by almost 18 percent. I always pay my rent on time by direct deposit, but now it's getting too much I get worried when he sends me threatening text messages and emails. I can't concentrate on my work properly.

The agent testified that he lives in the rental unit, which the tenant denied. The agent was asked how often he resides in the rental unit, and the agent stated when in town, which the tenant also denied.

The agent confirmed the person listed on the tenancy agreement is his female partner but denies that a tenancy agreement exists, then later changed their testimony to say that it was an old month-to-month tenancy.

The tenant testified that the landlord BY has never lived in the rental unit and although their mailing address listed on the tenancy agreement is the rental unit, the tenant was asked to forward all emails to Kelowna based on a text from landlord BY. The tenant stated that they have never met the landlord and that everything was arranged over the internet.

The agent claims that the Act does not apply to this tenancy, however has provided insufficient evidence to support that the Act does not apply, which I will address further below.

The tenant confirmed that they have not received a formal, written Notice of Rent Increase (NORI) form, which I will also address further below.

Analysis

Based on the documentary evidence, the testimony of the parties, and on the balance of probabilities, I find the following.

I find the agent to be unprofessional, hostile, intimidating and foul-mouthed to the extent that they were muted for a majority of the hearing as they could not cease their poor behaviour. Based on the agent changing their testimony from no tenancy agreement to confirmation of a month-to-month tenancy, I find the agent was not credible and I prefer the testimony of the tenant over that of the agent as a result.

Given this, I accept the tenant's testimony that the landlord has increased the monthly rent without serving the proper RTB Form 7 – Notice of Rent Increase for Residential Units (Rent Increase Form). Therefore, I find the landlord breached section 42 of the Act which applies and states:

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.
[emphasis added]

Given the above, I find the tenant's rent remains at \$390 per month and is due on the first day of each month until it is raised in accordance with the Act, which is described above.

Due to the agent's unreasonable behaviour, I make the following order against the landlord's agent, SD pursuant to section 62(3) of the Act:

I ORDER the agent, SD not to communicate with the tenant verbally or in writing form for the remainder of the tenancy, and that all communication to come from landlord BY only.

Should the agent fail to comply with my order, the tenant may apply to the RTB for compensation for loss of quiet enjoyment or other remedy such as a complaint to the RTB CEU. The tenant may file a complaint with the RTB CEU at any time, and they can be found at the following website:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/compliance-and-enforcement>

I also order the landlord to comply with section 29 of the Act, which states out the requirements for entering the rental unit as follows:

Landlord's right to enter rental unit restricted

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

[emphasis added]

In addition, the landlord and agent are reminded that the tenant is protected by the Act including section 28, which sets out the tenant's right to quiet enjoyment as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];**
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.**
[emphasis added]

Conclusion

The tenant's application fully successful.

Monthly rent remains \$390 per month and is due on the first day of each month.

The agent for the landlord has been ordered pursuant to section 62(3) as described above. Failure to comply with my order(s) may result in the tenant applying for further remedy under the Act.

Should the agent or landlord fail to comply with my order, the tenant may apply to the RTB for compensation for loss of quiet enjoyment such as full rent abatement, or other remedy such as a complaint to the RTB CEU. The website for the RTB CEU is listed above.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless 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: March 13, 2023

Residential Tenancy Branch