



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC, DRI, FFT**

Introduction

In November 2022 the Landlord applied for a review of the decision rendered following an October 27, 2022 hearing before the Residential Tenancy Branch. This review was granted on November 30, 2022 and was retuned for a hearing related specifically to consider “whether the tenancy agreement allows for occupancy rent and if so, how does that impact the outcome of the original decision.”

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

- an order for compensation for an illegal rent increase pursuant to section 41 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord MG appeared with agent TH. Tenant AG appeared with advocate EG. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the tenant entitled to an order for compensation for an illegal rent increase?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on February 1, 2019 on a month to month basis. Rent was initially \$1,850.00 per month and the landlord took a security deposit of \$1,000.00 which was returned to the tenant once the tenant vacated the rental unit. The tenancy ended on September 30, 2020.

The landlord testified that he learned that the tenant had more occupants in the rental unit than were originally agreed upon in the tenancy agreement in April 2019. The tenancy agreement was provided in evidence. The tenancy agreement contains a clause stating that the landlord will charge the tenant a fee for additional occupants. The fee charged will be \$100.00 extra rent per month per additional occupant.

The landlord testified that he learned that the tenant had two additional occupants, so he increased the rent by \$200.00 per month as per the tenancy agreement on April 1, 2019. The rent was therefore increased to \$2,050.00 per month.

The landlord testified that he provided the tenant with a written notice of rent increase on August 28, 2019. He provided RTB Form 7 in evidence. The rent increase was for \$53.00 per month as per the legislated rent increase allowed for in 2020. The rent as of January 1, 2020 was \$2,103.00 as per the legislated rent increase.

The landlord then stated he increased the rent another \$297.00 per month on January 1, 2022 as he learned that there were three additional occupants in the rental unit. He wished to make the rent payment a round number. Therefore, the rent as of January 2022 was \$2,400.00 per month. The landlord testified that the tenant paid all of the rent increases and did not complain to the landlord or file an application for dispute resolution until after she ended the tenancy. The landlord argued that by paying the rent increase and not raising the issue earlier the tenant accepted the rent increases.

The tenant testified that she did not receive the RTB Form 7 dated August 28, 2020 from the landlord. She stated that she was told verbally about all the rent increases. She stated she did complain to the landlord about the rent increases but paid all rent increases imposed because she believed the landlord would end the tenancy if she didn't pay the rent requested by the landlord. The tenant further stated that she never signed the tenancy agreement and never received a copy.

Analysis

RTB Rules of Procedure 6.6 states, “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 this case, the tenant.

RTB Policy Guideline 37 A states in part:

Under section 36 of the Manufactured Home Park Tenancy Act (MHPTA) and section 43 of the Residential Tenancy Act (RTA), a landlord may impose a rent increase only up to the amount:

- calculated in accordance with the regulations (“annual rent increase”),
- agreed to by the tenant in writing (“agreed rent increase”), or
- ordered by the director on an application in the circumstances prescribed in the regulations (“additional rent increase”).

And further:

If a landlord collects an unlawful rent increase, the tenant may deduct the increase from their rent, or apply for a monetary order for the excess rent collected.

I find based on the evidence of the landlord that he provided the tenant with proper notice of a rent increase in August 2019. I rely on the written notice of rent increase provided in evidence by the landlord and dated August 28, 2019. However I find that a portion of that rent increase was still unlawful as it was higher than the amount of rent increase allowed under the legislation. Section 43 of the Act permits a landlord to increase rent on a percentage basis. The percentage of allowable rent increase for 2020 was 2.6% of the current lawful rent paid by the tenant.

RTB Policy Guideline 19 states in part:

While terms restricting the number of occupants or requiring prior consent of the landlord for additional occupants are not standard terms of a tenancy agreement under the Act, the parties may include such clauses and may also set out in their written tenancy agreement that the amount of rent increases for additional occupants, in accordance with s. 13 (2)(iv) and s. 40 of the Act.

I have reviewed the tenancy agreement provided in evidence by the landlord and note that it is not signed by either party. The parties' names are written on the agreement but there are no signatures in the place designated for the parties to sign. Based on the evidence of the tenancy agreement and the evidence of the tenant that she did not receive the tenancy agreement, I find that the landlord has not established that the tenant agreed to the clause in the tenancy agreement that the landlord relied on to increase the rent. Further I do not accept that the tenant accepted the rent increase by paying the increase. The Act contemplates the possibility of illegal rent increases and allows the tenant to withhold rent based on an illegal rent increase. I accept the tenant's evidence that she paid the illegal rent increase so as not to lose her housing, I therefore find both the \$200.00 rent increase in April 2019, and the \$297.00 rent increase in January 2022 were unlawful.

The legislated rent increase must be calculated using the initial rent of \$1,850.00 as I have found the \$200.00 April 2019 rent increase unlawful. The allowable rent increase notice could properly increase the tenant's rent to \$1,898.10 per month commencing January 1, 2020.

As the tenant paid an extra \$200.00 per month from April 1, 2019 to December 31, 2019, I find that the tenant overpaid rent in 2019 in the amount of \$1,800.00.

It is undisputed that the tenant began paying rent in the amount of \$2,103.00 on January 1, 2020 and paid that rent until January 2022. The tenant was only lawfully required to pay \$1898.10 per month as of January 1, 2020. In subtracting the total amount of rent the tenant paid during that time period, of \$25,236.00 ($\$2,103.00 \times 12$ months) from the total amount of rent the tenant was lawfully required to pay of \$22,777.20 ($\$1,898.10 \times 12$ months), I find that for the period from January 1, 2020 to December 31, 2021, the tenant overpaid rent in the amount of \$2,458.80.

In January 2022 the landlord increased the rent again by \$297.00 per month to a total of \$2,400.00 per month for additional occupants in the rental unit. I have already found that the landlord has not satisfied me that the tenant either agreed to the rent increase or accepted it by her actions of paying rent and that this rent increase was unlawful. The only evidence before me of a lawful rent increase was the rent increase that began on January 1, 2020. The tenant was only required to pay rent in the amount of \$1,898.10 per month until her tenancy ended September 30, 2022. The tenant paid \$21,600.00 in rent for 2022 ($\$2,400.00 \times 9$ months) when she was only lawfully required to pay \$17,082.90 in rent (\$17,082.90). Therefore in 2022, the tenant overpaid rent in the amount of \$4,517.10.

As a result, the tenant is entitled to receive a new monetary order compensating her for an unlawful rent increase. The tenant's application is granted, and the tenant is entitled to a monetary order for compensation for an unlawful rent increase. As the tenant was successful in her application, she is entitled to recover the \$100.00 filing fee.

Conclusion

The tenant is entitled to a monetary order as follows:

Claim	Amount
Overpayments	
April 1, 2019 – December 31, 2019	\$1,800.00
January 1, 2020 – December 31, 2021	\$2,458.80
January 1, 2022 – September 30, 2022	\$4,517.10
Filing Fee	\$100.00
Total	\$8,875.90

The monetary order must be served on the landlord. 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: March 29, 2023

Residential Tenancy Branch