



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, DRI, FFT

Introduction

The Tenant applied for dispute resolution (“Application”) and seeks an order cancelling a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) pursuant to section 49(8)(a) of the *Residential Tenancy Act* (the “Act”). They are also disputing a rent increase under section 43 of the Act and are seeking to recover the cost of the filing fee under section 72 of the Act.

The Landlord attended the hearing with a Translator. The Tenant also attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant testified that they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlord on April 1, 2023 via registered mail. The Landlord confirmed receipt of the Materials and raised no issues with service. I find that pursuant to sections 89 and 90 of the Act that Tenant’s Materials were sufficiently served to the Landlord.

The Landlord testified they served their evidence by placing it underneath the Tenant’s door and via an instant message application on April 12, 2023. The Tenant confirmed they received the Landlord’s evidence and that they had sufficient time to review it. Given the above, I find that the Landlord’s evidence was sufficiently served in accordance with section 71(2)(c) of the Act.

Issues to be Decided

1. Should the Notice be canceled?
2. If not, is the Landlord entitled to an Order of Possession?
3. Is the rent increase imposed by the Landlord lawful?
4. If not, is the Tenant entitled to a Monetary Order as compensation?
5. Is the Tenant entitled to recover the filing fee for the Application?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

Both parties agreed that the tenancy started on March 30, 2021 and that rent is \$2,600.00 per month due on the first day of the month. A security deposit of \$1,200.00 was paid by the Tenant, which the Landlord still retains. A copy of the written tenancy agreement ("Tenancy Agreement") was entered into evidence by the Tenant which indicates that the tenancy was initially for a fixed-term of one year and became a month-to-month tenancy on March 31, 2022. The Tenant still occupies the rental unit.

Tenant's request to cancel the Notice

The Landlord testified that they served the Notice to the Tenant as they have a condition which leads to joint pain and they can no longer manage stairs. They stated that, year-by-year, their condition is getting worse, especially in winter months.

The Landlord stated they plan to move back into the rental unit, which is an apartment, for their old age in order to accommodate their condition. They have put their current residence up for sale around a month ago, have had open houses and are hoping to finalize an offer, subject to financing. A copy of the listing for the Landlord's house and realtor contact details were entered into evidence by the Landlord.

The Landlord stated they had looked at alternative apartments to rent but the market rental was around \$3,000.00 per month.

A copy of the Notice was entered into evidence by the Tenant. It is signed March 16, 2023 and provides an effective date of May 30, 2023. The close family member that will occupy the rental unit provided is the landlord or landlord's spouse.

The Tenant stated they believe the Landlord's motives are financial and they just want more rental income. They stated the Landlord had tried to increase the rent in a conversation on December 2, 2022 where the Landlord had requested the Tenant pay rent of \$2,800.00 per month.

The Tenant testified that in February 2023 the heating in the rental unit broke. The Tenant hired a company to repair the heating who had been hired by the Landlord on a previous occasion. The Landlord disagreed with the amount paid by the Tenant for repairs and asked the Tenant to move out of the rental unit.

The Tenant confirmed receipt of the Notice on March 16, 2023.

Dispute of rent increase

The Tenant testified that the Landlord had contacted them on December, 2 2022 to discuss a rent increase. After requesting an increase from \$2,400.00 to \$2,800.00 per month, the parties agreed on an amount of \$2,600.00 even though the Tenant was aware that the maximum rent increase permitted by the *Residential Tenancy Regulations* was 2%.

The Tenant did not receive 3 month's notice so paid the amount of \$2,400.00 on January 1, 2023. The Landlord requested an additional \$200.00 on January 4, 2023 which the Tenant did not pay, though they did pay rent of \$2,600.00 for the months February 2023, March 2023 and April 2023.

The Landlord did not dispute the Tenant's testimony and confirmed they did not provide 3 month's notice of the rent increase to the Tenant or serve any forms to the Tenant in relation to the rent increase.

Analysis

Tenant's request to cancel the Notice

Section 49(3) of the Act allows a landlord to end a tenancy if the landlord or a close family member intends, in good faith, to occupy the rental unit. Section 49(8) also allows the tenant to challenge the Notice within 15 days

As the Notice was served on March 16, 2023 and the Tenant filed their Application on March 27, 2023, the Tenant filed this Application in time to dispute the Notice.

Pursuant to Rule of Procedure 6.6, the onus is on the Landlord to prove, on the balance of probabilities, that Notice is valid. Additionally, Policy Guideline 2A states the landlord must demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no ulterior motive for issuing the Notice. Policy Guideline 12 discusses the idea of good faith and the need not to have an ulterior motive for ending the tenancy.

Based on the testimony from both parties, it is clear to me that the Landlord wished to increase monthly rent in December 2022, though I do not find that the Landlord's motives behind issuing the Notice to be financial.

Based on the testimony and evidence of the Landlord, I accept that they have a condition which affects their joints and makes using stairs difficult. Also, I find that the Landlord has placed their house on the market with the intentions of selling it and moving into a property without stairs indefinitely. I found the testimony of the Landlord to be consistent, detailed and credible.

Both parties agreed that the current rent for the rental unit is below market rate. If the Landlord were to rent another apartment, they would have to pay more than they would receive in rental income from the rental unit and be financially worse off. It would, therefore, make more sense for the Landlord to occupy the rental unit, rather than rent a separate apartment at a higher monthly amount.

Given the above, I find that the Landlord has proven, on the balance of probabilities, that they intend to occupy the rental unit for at least six months and that the Notice was issued in good faith.

Accordingly, I dismiss the Tenant's request to cancel the Notice without leave to reapply. I also find that the Notice complies with the form and content requirements of section 52 of the Act. Section 53 of the Act provides that incorrect effective dates automatically changed which is of relevance here as the effective date of the Notice should read May 31, 2023 instead of May 30, 2023.

Therefore, the Landlord is entitled to an Order of Possession under section 55(1) of the Act. I find that the tenancy will end on May 31, 2023 in accordance with the Notice and that date will be reflected on the Order of Possession.

The Tenant is authorized to withhold the rent payment due on May 1, 2023 in accordance with section 51(1) of the Act which confirms a tenant's right to receive compensation equivalent to one month's rent when a tenancy is ended under a Two Month Notice to End Tenancy for Landlord's Use.

Dispute of rent increase

Section 43 of the Act states that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the Director following an application or agreed to by the tenant in writing.

Additionally, Policy Guideline 37B on Agreed Rent Increases provides that a tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase and that the agreement must:

- be in writing,
- clearly set out the rent increase (for example, the percentage increase and the amount in dollars),
- clearly set out any conditions for agreeing to the rent increase,
- be signed by the tenant, and
- include the date that the agreement was signed by the tenant.

Additionally, Policy Guideline 37B provides that when a tenant does agree to a rent increase above the maximum annual rent increase, there is still a requirement for a Notice of Rent Increase to be issued to the tenant three full months before the increase is to go into effect. In this situation, the landlord should attach a copy of the written agreement signed by the tenant to the Notice of Rent Increase given to the tenant.

In this case, though the Tenant agreed to a rent increase above the amount provided by the *Residential Tenancy Regulations*, the agreement did not meet the formalities set out in Policy Guideline 37B. Crucially, the Landlord did not provide the Tenant a full three month's notice of the rent increase and did not serve the Tenant the approved form to increase rent. Both of these omissions on the Landlord's part are in breach of section 42 of the Act which sets out timing and notice of rent increases.

Given that the Landlord did not provide sufficient notice to the Tenant regarding the rent increase and did not serve the approved form, I use my authority under section 62(2) of the Act and find that the rent increase is unlawful and is of no force or effect. As such, rent remains at \$2,400.00 per month. The Tenant's Application disputing the rent increase is granted.

Because the Tenant has paid an unlawful rent increase of \$200.00 per month for three months, I use my authority under section 67 of the Act and order that the Landlord pay the Tenant \$600.00 as compensation for this overpayment of rent.

As the Tenant has been partially successful in their Application, I find they are entitled to recover the filing fee from the Landlord.

As the Tenant is already authorized to withhold their last month's rent under section 51(1) of the Act and no other rent payments are due, I issue a Monetary Order to the Tenant.

Conclusion

The Tenant's Application to cancel the Notice is dismissed without leave to reapply.

The Landlord is issued an Order of Possession.

A copy of the Order of Possession is attached to this Decision. It is the Landlord's obligation to serve the Order of Possession on the Tenant. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

The Tenant's Application disputing the rent increase is granted.

The Tenant is issued a Monetary Order.

A copy of the Monetary is attached to this Decision. It is the Tenant's obligation to serve the Monetary Order on the Landlord. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Overpayment of rent	\$600.00
Filing fee	\$100.00
Total	\$700.00

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 26, 2023

Residential Tenancy Branch