



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 1299126 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, DRI, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to resolve a residential tenancy dispute. The tenant applied on March 27, 2023 for:

- an order to cancel a Two Month Notice for Landlord's Use, dated March 25, 2023 (the Two Month Notice);
- dispute of a rent increase above the amount allowed by law; and
- recovery of the filing fee.

The hearing was attended by the tenant's representative and by the landlord's representatives. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither side raised an issue regarding service of the hearing materials.

Preliminary Matter

At the beginning of the hearing the landlord's representatives confirmed that the numbered company is the legal landlord and that rent is paid to the numbered company. The numbered company is named as a respondent, as recorded on the cover page of the decision.

Issues to be Decided

- 1) Is the tenant entitled to an order cancelling the Two Month Notice?
- 2) Has the landlord implemented a rent increase above the amount allowed by law?
- 3) Is the tenant entitled to the filing fee?

Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began on June 1, 2013; rent is \$572.21, due on the first of the month; and the tenant paid a security deposit of \$250.00 which the landlord still holds in trust.

The landlord's representative testified they served the Two Month Notice on the tenant by putting it under the door on March 25, 2023 and telling the tenant about the Notice in person on the same day. The tenant's representative was not sure on which date in March the tenant received the Notice.

A copy of the Two Month Notice was submitted as evidence by the landlord. The numbered company is named as the landlord on the Two Month Notice. The Notice is dated, gives the address of the rental unit, and gives an effective date. The Notice is in the approved form (RTB-32) and states the tenancy is ending because the child of the landlord or landlord's spouse will occupy the unit.

Landlord's representative SL testified that his 24 year old daughter is going to move into the rental unit.

The tenant's representative submitted that while section 49 of the Act permits a landlord that is a family corporation to end a tenancy for landlord's use of property, the landlord in this case is a numbered company, not a family corporation, and therefore does not meet the requirements of the Act.

The tenant's representative testified that the landlord's representative asked the tenant to agree to a rent increase of \$400.00, and told the tenant that if he did not agree to the increase, the tenant's representative would move his daughter into the unit. The tenant's representative testified that when the tenant asked the landlord's representative for a copy of the proposed new tenancy agreement, the landlord's representative refused to provide it, telling the tenant that they get the eviction notice or the new tenancy agreement with the rent increase, not both.

The tenant's representative testified there is an empty unit beside the tenant's, and that the daughter of the landlord's representative could move into it.

The landlord's representative testified that the empty unit beside the tenant's "has been spoken for for a while," and that someone will be moving in, though they have not yet.

Regarding the tenant's dispute of a rent increase, the tenant's representative testified that the landlord's representative had verbally proposed a \$400.00 increase for this year and an additional \$200.00 increase for next year. The tenant's representative testified that the tenant has not paid an increase, and has continued to pay the rent of \$572.21 by post dated cheques.

The landlord's representative testified that he told the tenant the rent increase is not personal and that the landlord is losing money every month due to the cost of insurance, interest, and other expenses. The landlord's representative testified that his daughter can pay market rent.

Analysis

The landlord issued the Two Month Notice pursuant to section 49(3) of the Act, which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

For the purpose of section 49(3) a "landlord" means an individual who at the time of giving the notice has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest.

Based on the testimony of the parties, I find the landlord is a numbered company, not an individual. The Two Month Notice indicates the landlord is an individual, and that the individual's child will move into the unit; this is not the case. The landlord is a numbered company, and it is not possible for a numbered company to have a child. Therefore, I find the Notice is invalid.

I order that the Two Month Notice is canceled. This tenancy will continue until it is ended in accordance with the Act.

Regarding the tenant's dispute of a rent increase, based on the testimony of the parties, I find no rent increase has been implemented.

Regarding the proposed rent increase, Sections 42 and 43 of the Act outline the required timing, notice, and amount of rent increases:

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.

...

(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 2023 [rent increase limit](#) is two percent.

The rent for this tenancy is \$572.21. The landlord is at liberty to increase the rent in accordance with the Act and the Regulation.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in their application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The Two Month Notice is cancelled, and the tenancy will continue until it is ended in accordance with the Act.

No rent increase has been implemented.

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: May 05, 2023

Residential Tenancy Branch