



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1076988 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT, DRI

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Cancellation of a 10-day Notice to End Tenancy for Unpaid Rent, issued on or about 10 March 2023 [the 'Notice'].
2. Compensation in the amount of \$3,965.00 for services rendered to the landlords [the 'Compensation Claim'].
3. Compensation for an unlawful rent increase in the amount of \$10,200.00 [the 'Rent Increase Claim'].

The corporate landlords appeared at the hearing on 26 May 2023 by way of an agent.

Most of the tenants appeared ['Tenant H', 'Tenant K', and 'Tenant V'], and one of the tenants (Tenant K) appeared as agent for the remaining tenant ['Tenant P'].

Issues to be Decided

Did the tenants pay rent for March?

Do the landlords owe the tenants for work they did for the landlords?

Did the landlords unlawfully raise the rent?

Background and Evidence

This tenancy began in 2019. Tenant K signed a tenancy agreement with the landlords, agreeing that rent was \$1,300.00 *per* month, due on the first day of each month.

As part of their application, the tenants submitted a copy of this tenancy agreement [the 'Tenancy Agreement']. They told me it was an accurate copy of their agreement with the landlords. It included a reference to a one-page addendum with 20 additional terms. Near this reference are hand-written initials. Term #5 of this addendum reads:

Tenant can not sublet or rent out any portion of house without written consent from landlord[;] and tenant can add on roommates and rent increase will [be] \$300 minimum per person of 50% of the rent which he charges to roommate (which comes more) but still with written consent of landlord. Utilities will be always extra on top of rent portion.

Despite telling me that this agreement is an accurate copy of the tenancy agreement, Tenant K said that he never initialled the reference to the addendum. And, he pointed out, he did not sign the addendum itself.

At the end of 2019 or at the beginning of 2020, Tenant V moved into the unit with Tenant K. Then, in May or June of 2020, Tenant H moved into the unit as well. Finally, in August 2022, Tenant P moved in.

The landlords told me that the tenants failed to pay rent for March. And so they drafted the Notice. In drafting the Notice on or about 10 March, the landlords:

1. used the form approved by the RTB;
2. signed and dated the Notice;
3. recorded the address of the rental unit (albeit, with a minor spelling mistake);
4. recorded the effective date of the Notice as 23 March 2023; and
5. stated the basis for the Notice as the tenants failure to pay rent - \$1,500.00 of (outstanding) rent due 1 March.

The tenants told me the following about payments toward March rent that they made:

1. on 11 February, a government ministry paid \$600.00 to the landlords on behalf of Tenant V;
2. on the same day, the same ministry paid a further \$500.00 to the landlords on behalf of Tenant K;
3. on or around 28 February, Tenant H e-transferred \$600.00 to the landlords; and
4. on 1 March Tenant P paid \$600.00 cash to the landlords.

Regarding this last payment by Tenant P, Tenant V told me that she thought this was the amount and date on which Tenant P paid their portion of the rent. But Tenant P did not participate in this hearing: the tenants told me that Tenant P was too busy working.

For their part, the landlords told me that only Tenant H paid rent for March, *via* e-transfer on 28 February in the amount of \$600.00. They said that the other tenants are always a month behind in their rent payments. This means, they said, that the \$1,100.00 that they received sometime between 15 and 27 February (they weren't really sure when) on behalf of Tenant K and Tenant V are really overdue rent for February.

The landlords also said that they received nothing from Tenant P on 1 March, in contrast to the allegation of Tenant V.

The tenants told me that the first time they heard from the landlords that they were behind in rent was at this hearing.

Analysis

I have considered all the evidence proffered by the parties. And I have considered all the arguments made by the parties.

The statements of the parties at this hearing are often contradictory. This is not uncommon. But in this case I have found the Tenancy Agreement to be key in resolving these contradictions.

How much is rent?

The landlords argue that rent is \$2,100.00 *per* month. And the tenants argue that rent is \$1,600.00 *per* month.

The Tenancy Agreement states that, with Tenant K as the only tenant, rent is \$1,300.00 *per* month. It also states that rent increases by \$300.00 for each additional occupant.

I accept that this is probably an accurate articulation of the agreement regarding this tenancy. While Tenant K denies that he signed the addendum or initialled the reference to the addendum, I have no evidence that in the three or more years since signing the

Tenancy Agreement that the tenants ever disputed its terms. It appears that, only since the issuing of the Notice, that the tenants take issue with the Tenancy Agreement. Nor did the tenants submit a copy of the Tenancy Agreement without the addendum or without the initials, as Tenant K implies must exist if he never agreed to the addendum.

As *per* the Tenancy Agreement, therefore, the rent ought to be:

- \$1,300.00 *per* month with Tenant K;
- plus \$300.00 *per* month with Tenant V;
- plus another \$300.00 *per* month with Tenant H; and
- plus a final \$300.00 *per* month with Tenant P.

This totals \$2,200.00 per month. But the landlords effectively waived \$100.00 of that rent by telling me that rent should only be \$2,100.00 *per* month. I accept this amount as the more probable rent than the \$1,600.00 advocated by the tenants.

Did the landlords illegally raise the rent?

The tenants say that the rent should be only \$1,600.00 because landlords illegally increased rent to \$2,100.00. They argue that the landlords did not comply with the Act when they raised the rent from \$1,300.00 to \$2,100.00. In particular, they cite a rent-increase 'freeze' for 2021 that precluded the landlords from increasing rent, as a result of the pandemic.

But, under the Act, the raising of this rent is not, in law, the kind of 'rent increase' that the tenants argue is precluded. I will explain why this is so.

Section 13 (2) (f) (iv) of the Act requires that a tenancy agreement set out whether rent varies with the number of occupants of a unit and, if so, by what amount. This Tenancy Agreement complies with that section.

Section 40 of the Act excludes from the definition of regulated 'rent increase' a rise in rent authorised under a tenancy agreement to account for one or more additional occupants. This Tenancy Agreement authorises a rise in rent for additional occupants. That means that the legislative restrictions on 'rent increases' do not apply. In effect, the landlords did not impose a 'rent increase'. Rather, the tenants agreed to pay more rent with each additional occupant.

Accordingly, I dismiss the Rent Increase Claim.

How much rent was paid for March?

I accept that the monies received by the landlords from the tenants in February were for March rent. I have determined this by considering two facts in particular:

1. the landlords' statement that Tenant H paid her portion of March rent before it was due on 1 March, indicating that the landlords would accept rent payments from the tenants before the due date; and
2. the Tenancy Agreement, which sets out that rent is due on the first day of each month, which in turn indicates that monies received after that date would be for the next month's rent.

Having made this determination, then how much did the tenants pay to the landlords in February? The tenants, applying to cancel the Notice, bear the burden of proving to me on a balance of probabilities that they paid rent in full.

Based on the statements made by the parties at this hearing, I find that the tenants paid a total of \$1,700.00 in February for March rent. As for the \$400.00 outstanding, while Tenant V said that Tenant P paid \$600.00 toward this in cash on 1 March, the landlords deny this.

The burden is on the tenants to prove that this amount was paid. The landlords deny that Tenant P paid anything for March. There was no direct evidence from Tenant P as to his payments. He did not participate in this hearing because he was working.

But the tenants did not submit a written statement from Tenant P to support their claim. Nor was there any evidence to corroborate Tenant V's belief about what Tenant P paid and when. And so I find that the tenants have not met their burden of proving that Tenant P paid the outstanding \$400.00 owed for March rent.

Section 26 (1) of the Act places a positive obligation upon the tenants to pay rent, with which the tenants have not complied. As a result, I uphold the Notice and find that the tenancy is at an end, effective 23 March 2023.

Do the landlords owe the tenants for work they did for the landlords?

The tenants claim that the landlords owe them almost \$4,000.00 in labour performed by the tenants at the rental unit for the benefit of the landlords. They say that this labour was to be credited against other costs ('unpaid bills') associated with the tenancy.

The landlords clarified that the cost of this labour was to be applied toward utility payments.

The landlords issued the Notice for unpaid rent. And the dispute over what the rent ought to be, and how much of it was paid, is clearly related to the Notice. But the Compensation Claim is about utilities and or 'unpaid bills' and, as such, is unrelated to the Notice and the Rent Increase Claim.

Rule 2.3 of the RTBs Rules of Procedure stipulates that, 'Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.'

As the Compensation Claim is not related to the other claims in this application, I dismiss the Compensation Claim with leave to re-apply. In doing so, I do not make any finding on the merit of the Compensation Claim: only that their claim is unrelated to the other claims. The tenants are free to re-apply for the Compensation Claim.

Conclusion

I dismiss the application to cancel the Notice, without leave to re-apply, and I make an Order of Possession in favour of the landlords.

This order is effective two days after the landlords serve it upon the tenants. If the tenants or any occupant of the rental unit fails to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

I order that the tenants pay to the landlords \$400.00 for unpaid rent *per* section 55 (1.1) of the Act.

The landlords must serve this order on the tenants as soon as possible. If the tenants do not comply with my order, then the landlords may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlords can enforce my order as an order of that court.

I dismiss the Rent Increase Claim without leave to re-apply.

And I dismiss the Compensation Claim with leave to re-apply.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 6 June 2023

Residential Tenancy Branch