Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FFT

Introduction

The hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that on April 24, 2023 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on April 23, 2022 was sent to the Landlord, via registered mail. The Agent for the Landlord with the initials "HB", hereinafter referred to as HB, acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On June 02, 2023 the Tenants submitted additional evidence to the Residential Tenancy Branch and an Amendment in which the Tenants added an application to dispute a rent increase and to recover the unlawful rent increase. The Tenant stated that these documents were sent to the Landlord by email. HB acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On June 07, 2023 and June 09, 2023, the Tenants submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that these documents were sent to the Landlord by email on June 09, 2023. HB stated that this evidence was not received. I find that the evidence submitted by the Tenants on June 07, 2023 was served to the Landlord well after the deadline established by the Residential Tenancy Branch Rules of Procedure. As the evidence was served to the Landlord after the deadline and the

Landlord does not acknowledge receiving it, it was not accepted as evidence for these proceedings.

On June 08, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord with the initials "JF", hereinafter referred to as JF, stated that this evidence was personally served to the female Tenant on June 08, 2023. The Tenant stated that he received this evidence from the female Tenant on June 08, 2023. As it was received by the Tenants, it was accepted as evidence for these proceedings.

On June 19, 2023 the Tenants submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that these documents were not served to the Landlord. As they were they were not served to the Landlord, they were not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?
Are the Tenants entitled to a rent refund because the Landlord has collected rent increase that did not comply with the *Residential Tenancy Act (Act)*?

Background and Evidence

The Landlord and the Tenant agree that:

- The Tenants first moved into the unit in 2010;
- The most recent tenancy agreement they signed declared that the tenancy began April 15, 2019;
- The most recent tenancy agreement declares that rent is $1,000.00 per month;
- The most recent tenancy agreement declares that until certain repairs are made to the rental unit, the rent will only be $800.00 per month;

- Rent was due by the 15th day of each month; and
- Rent has been paid for June of 2023.

JF stated that on March 31, 2023 the Landlord sent the Tenants a Two Month Notice to End Tenancy for Landlord's Use of Property, which is dated March 31, 2023, via email. The Tenant stated that this document was received, via email, on March 26, 2023.

The parties agree that the Two Month Notice to End Tenancy for Landlord's Use of Property declares the Tenants must move out of the rental unit by June 01, 2023 because it will be occupied by the child of the Landlord or the Landlord's spouse.

The Tenants named on the Two Month Notice to End Tenancy for Landlord's Use of Property are different than the Tenants named on the Application for Dispute Resolution and the tenancy agreement. HB stated that the Landlord believed the Tenants were correctly named on the Two Month Notice to End Tenancy for Landlord's Use of Property. The Tenant stated that the Tenants were not correctly named on the Two Month Notice to End Tenancy for Landlord's Use of Property, although the Tenants understood the Two Month Notice to End Tenancy for Landlord's Use of Property related to their tenancy.

HB stated that:

- He is the Landlord's son;
- He is currently living with his parents;
- He is getting married in August;
- He intends to move into the rental unit with his wife once they are married;
- He intends to make cosmetic changes to the unit prior to moving in, which he anticipates will take approximately 2-3 weeks;
- He wishes to move into the rental unit so he will have privacy from his parents.

The Landlord submitted a wedding invitation that indicates HB will be married in August of 2023. The Tenant notes that the wedding invitation does not specify the date of the wedding.

The Landlord submitted affidavits from HB and his bride, which corroborate HB's testimony.

The Tenant submits that the Two Month Notice to End Tenancy for Landlord's Use of Property was served because the Tenants have opposed the Landlord's attempts to improperly increase the rent. In support of this submission the Tenant stated that:

- The Tenants did not initially pay the rent of $1,000.00 that the 2019 tenancy agreement declared was due;
- The addendum to the 2019 tenancy agreement declares that the rent will remain at $800.00 if the Landlord does not make repairs specified in the addendum;
- In April of 2019 they continued to pay rent of $800.00, because the Landlord did not make repairs that were outlined in the addendum to the 2019 tenancy agreement;
- In April of 2020 they began paying rent of $1,000.00 because the Landlord provided them with documents that suggested they could be evicted if they did not pay rent in that amount;
- Not all of the repairs listed in the addendum have been adequately repaired;
- The Landlord promised to repair the living room drywall where the ceiling meets the wall;
- The Landlord only partially repaired the drywall;
- The Landlord promised to replace the shower door and tiles, which were not done;
- No photographs of the shower were submitted in evidence;
- The Landlord promised to repair the door to eliminate excess air from entering;
- The Landlord placed weather stripping on the doorframe, which frequently had to be replaced by the Landlord;
- On October 29, 2022, the Landlord finally dismantled the door frame and properly repaired the door;
- No photographs of the "inadequate" door repair were submitted;
- The Landlord promised to reseal the washroom sink, which was done in 2019;
- The sink needs to be sealed again; and
- The Landlord promised to relocate the washing machine electrical outlet and conceal the wiring, which has not been properly completed.

In response to the rent increases, HB stated that:

- The Tenants did not initially pay the rent of $1,000.00 that the 2019 tenancy agreement declared was due;
- The addendum to the 2019 tenancy agreement declares that the rent will remain at $800.00 if the Landlord does not make repairs specified in the addendum by April 15, 2019;

- In April of 2019 the Tenant continued to pay rent of $800.00, because the Tenants believed the Landlord did not satisfactorily complete the repairs that were outlined in the addendum to the 2019 tenancy agreement;
- In April of 2020 the Tenants began paying rent of $1,000.00 because they were satisfied the repairs had been satisfactorily completed;
- All of the repairs listed in the addendum have been adequately repaired;
- The Landlord promised to repair the living room drywall where the ceiling meets the wall;
- The Landlord has adequately repaired the drywall;
- The Landlord promised to replace the shower door and tiles, which has been done, albeit with tiles that do not match precisely;
- The Landlord promised to repair the door to eliminate excess air from entering;
- The Landlord placed weather stripping on the doorframe, which frequently had to be replaced by the Landlord;
- On October 29, 2022, the Landlord dismantled the door frame and repaired the door in a different manner;
- The Landlord promised to reseal the washroom sink;
- The caulking around the sink was replaced in 2019;
- The caulking may now need to be replaced;
- The Landlord promised to relocate the washing machine wiring, which has been done; and
- The Landlord did not serve the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, although the Landlord provided them with information about what could happen if rent is not paid in full.

The Landlord and the Tenant agree that:

- In November of 2021 the Landlord verbally informed the Tenants that the rent would increase from $1,000.00 to $1,025.00, effective January 15, 2022;
- The Tenants began paying rent of $1,025.00 on January 15, 2022;
- In November of 2022 the Landlord verbally informed the Tenants that the rent would increase from $1,025.00 to $1,100.00, effective January 15, 2023;
- On December 30, 2022 the Tenant informed the Landlord that would not be paying the proposed rent increase of $1,100.00;
- The Tenants advised the Landlord, via email, that they would pay increased rent of $1,045.50;
- The Tenants began paying rent of $1,045.50 on January 15, 2023; and

- The Landlord did not serve any of the aforementioned rent increases on the notice of rent increase form designed by the Residential Tenancy Branch.

Analysis

Section 49(3) of the *Act* permits a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence, I find that in March of 2023 the Landlord served the Tenants with notice of the Landlord's intent to end the tenancy pursuant to section 49(3) of the *Act*, which declared the tenancy was ending on June 01, 2023.

Although the Two Month Notice to End Tenancy for Landlord's Use of Property does not properly name the Tenants, on the basis of the testimony of the Tenant and the fact it was sent to the Tenants by email, I am satisfied that the Tenants understood it was intended for them. I therefore find it reasonable to amend the Two Month Notice to End Tenancy for Landlord's Use of Property to reflect the proper names of the Tenants, pursuant to section 68(1) of the *Act*.

I find that the Landlord has established grounds to end this tenancy pursuant to section 49(3) of the *Act*, as HB, who is his son, intends, in good faith, to move into the rental unit after he is married in August. In reaching this conclusion I was heavily influenced by HB's testimony. I found his testimony to be forthright and consistent, and I can find no reason to discount that testimony.

In addition, I find that HB's testimony is corroborated by the affidavit of his future wife and the wedding invitation submitted in evidence. I find it largely irrelevant that the wedding invitation does not provide the date of the wedding, as it is clear the entire invitation is not captured in the image submitted.

As I have determined that the Landlord has grounds to end this tenancy pursuant to section 49(3) of the *Act*, I dismiss the Tenants' application to set aside the Two Month Notice to End Tenancy for Landlord's Use. As the application to set aside the Notice to End Tenancy has been dismissed and the Two Month Notice to End Tenancy for Landlord's Use complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

The Tenant contends that the manner in which the Landlord has attempted to raise the rent suggests that the Two Month Notice to End Tenancy for Landlord's Use of Property was served because the Tenant objected to rent increases.

Residential Tenancy Branch Policy Guideline 2A suggests the following:

In Gichuru v Palmar Properties Ltd., 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.

If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

I will address the issue of good faith after I have addressed the rent increases that occurred after April 15, 2019.

I find that the Tenants agreed to increase the rent from $800.00 to $1,000.00, effective April 15, 2019, when they signed a new tenancy agreement which declares the rent will be $1,000.00. On the basis of the addendum to that tenancy agreement, I find that the parties agreed the rent would remain at $800.00 if repairs specified in the addendum were not completed.

As the Tenants agreed to pay the increased rent of $1,000.00 in the written tenancy agreement, I find that this rent increase complied with section 43(1)(c) of the *Act.* This section permits a landlord to impose a rent increase up to the amount "agreed to by the tenant in writing". I therefore find that the Landlord had the right to impose this rent increase, providing the repairs listed in the addendum were completed.

Section 42(3) of the *Act* stipulates that a notice of a rent increase must be given to a tenant in the approved form. Although there is no evidence that the rent increase of $200.00 was given to the Tenants in the form approved by the Residential Tenancy Branch (RTB-45), I cannot conclude that the Tenants were unduly disadvantaged by that, as the Tenants signed the new tenancy agreement, it appears obvious that they understood that they were agreeing to pay increased rent.

Section 42(2) of the *Act* stipulates that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. As the most recent tenancy agreement was signed on March 10, 2019 and the increase was to take effect on April 15, 2019, I find that the Tenants were not given three months notice of the rent increase.

On the basis of the undisputed evidence, I find that the Tenants did not pay the increased rent of $1,000.00 until April 15, 2020. As they did not pay the increased rent until over a year after they agreed to the increase, I find they had more than 3 months notice that the rent would increase.

I find that when the Tenants paid the increase rent of $1,000.00 beginning on April 15, 2020, they implied that the repairs listed on the addendum had been completed. I do not find it reasonable that they can argue, almost two years after they began paying the rent, that the rent of $1,000.00 was never due because the repairs were not adequately completed.

In reaching this conclusion, I was heavily influenced by the absence of any (accepted) evidence, such as an email, that shows they informed the Landlord that they believed that the repairs were incomplete and that the rent should remain at $800.00.

Even if it was reasonable for the Tenants to now argue that the rent should never have been increased from $800.00 to $1,000.00 because the repairs were not adequately completed. I find that the Tenants have failed to establish that they were not adequately

completed. As the Tenants are alleging there has been an unlawful rent increase, I find the Tenants bear the burden of proving the repairs were not adequately completed.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

Although the Tenant testified the repairs were not completed properly, HB testified they were. In the absence of (accepted) evidence to corroborate the testimony that the repairs were not adequately completed in 2019, the Tenants have failed to meet the burden of proving they were not completed. Although the Tenant stated that photographs were submitted to support his claim that the repairs were not adequately completed, those photographs were not accepted as evidence for these proceedings and they were not considered.

I have reviewed communications and documents exchanged between the parties in April of 2020, in which the Landlord refers to the process of serving a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. I find that the information regarding service of a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was more closely related to the Tenant's ability to pay the rent on time, rather than whether the Tenants should be paying rent of $1,000.00. I find it does not support the Tenant's submission that they began paying rent of $1,000.00 in April of 2020 because they feared eviction.

I find that the Tenants are not entitled to a rent refund for any of the rent that was paid between April of 2019 and January 14, 2021.

On the basis of the undisputed evidence, I find that in November of 2021 the Landlord verbally informed the Tenants that the rent would increase from $1,000.00 to $1,025.00, effective January 15, 2022.

Section 43(1)(a) of the *Act* permits a landlord to impose a rent increase only up to the amount calculated in accordance with the Regulations. In 2022 the allowable rent increase was 1.5%. 1.5% of $1,000.00 is $15.00. As the $25.00 rent increase imposed by the Landlord on January 15, 2022 exceeded the permissible amount for 2022, I find that the Landlord did not have the right to increase the rent to $1,025.00. As the rent

was not properly increased from $1,000.00 in January of 2022, the rent remained at $1,000.00.

Section 43(5) of the *Act* stipulates that 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.

On the basis of the undisputed evidence, I find that the Landlord collected monthly rent of $1,025.00 for the period between January 15, 2022 and January 14, 2023. As the Landlord did not have the right to collect the additional $25.00 in monthly rent for those 12 months, I find that the Tenants are entitled to recover that rent increase, in the amount of $300.00.

On the basis of the undisputed evidence, I find that in November of 2022 the Landlord verbally informed the Tenants that the rent would increase from $1,025.00 to $1,100.00, effective January 15, 2023; that the Tenants advised that Landlord that the maximum allowable rent increase for 2023 was 2%; the Tenant calculated the new rent to be $1,045.50 (based on rent of $1,025.00); and the Tenants began paying rent of $1,045.50 on January 15, 2023.

In 2023 the allowable rent increase was 2%. As the rent was never properly increased from $1,000.00 in 2022, the Landlord only had the right to increase the rent in 2023 by $20.00. (2% of $1,000.00). As the $20.50 rent increase collected by the Landlord on January 15, 2023 exceeded the permissible amount for 2023, I find that the Landlord did not have the right to increase the rent from $1,000.00 in 2023. As the rent was not properly increased from $1,000.00 in January of 2023, the rent remained at $1,000.00.

On the basis of the undisputed evidence, I find that the Landlord collected monthly rent of $1,045.50 for the period between January 15, 2023 and July 14, 2023. As the Landlord did not have the right to collect the additional $45.50 in monthly rent for those 6 months, I find that the Tenants are entitled to recover that rent increase, in the amount of $273.00.

While I have concluded that the Landlord has made several errors in regard to how the rent was increased after April 15, 2019, I do not find that those errors establish that the Two Month Notice to End Tenancy for Landlord's Use of Property was served in bad faith. Rather, I find that they establish that the Landlord was unfamiliar with the legislation regarding rent increases.

I find that the Landlord had a pattern of increasing the rent incorrectly and I cannot correlate those mistakes to service of this Two Month Notice to End Tenancy for Landlord's Use of Property. I am simply not satisfied that the Landlord served the Two Month Notice to End Tenancy for Landlord's Use of Property because the Tenant opposed the rent increases.

I find that on December 30, 2023, the Tenants informed the Landlord that they would not be paying the increased rent of $1,100.00. I find that the Two Month Notice to End Tenancy for Landlord's Use of Property was not served until March 30, 2023. As there were several months between these two events, I find it unreasonable to conclude they were correlated.

The Tenants have sought compensation for rent increases that pre-date the rent increase imposed on April 15, 2019. As I concluded that the rent increase that was proposed on April 15, 2019 was lawful, given that the Tenant agreed it, I find that there is no need for me to consider any rent increases that were imposed prior to that date for the purpose of considering the good faith argument.

I have considered the claim related to rent increases for any increases imposed after April 15, 2019, as that matter was relevant to the issue of good faith. As I needed to consider those rent increases, I find it reasonable for me to consider whether the Tenants are entitled to a recover any rent paid as a result of those increases.

It was not necessary for me to consider the claim related to rent increases for any increases imposed prior to April 15, 2019, as that matter was not relevant to the issue of good faith.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. As I did not need to consider any rent increases imposed prior to April 15, 2019 while considering the application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property, I find that any claim related to those prior rent increases are not sufficiently related to the primary issue in dispute at these proceedings.

I therefore sever any claims related to rent increases imposed prior to April 15, 2019 and I will not consider those at these proceedings. The Tenants retain the right to file another Application for Dispute Resolution regarding those increases.

I find that the Tenants' Application for Dispute Resolution has some merit and that they are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession **that is effective on July 14, 2023**. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Tenants have established a monetary claim of $673.00, which includes a rent refund of $573.00 and $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: June 21, 2023

Residential Tenancy Branch