



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, DRI, AS, OLC, FFT
OPN, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by one tenant as against the landlord, and by the landlord as against 2 tenants, which have been joined to be heard together.

The tenant has applied for the following relief:

- an order cancelling a notice to end the tenancy for cause;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- disputing a rent increase;
- an order allowing the tenant to assign or sublet because the landlord's consent has been unreasonably withheld;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The landlord has applied for an order of possession because the tenant has given written notice to end the tenancy, and to recover the filing fee from the tenants.

One of the named tenants and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

Both parties have provided evidentiary material. Some of the landlord's evidence was uploaded to the Residential Tenancy Branch automated system later than the time required by the Rules of Procedure. The landlord's agent testified that the evidence

was served to the tenant in person on October 5, 2023 and the late evidence on November 28, 2023. The landlord's agent also testified that the tenant served some evidence to the landlord by email, but did not serve the landlord with the Notice of Dispute Resolution Proceeding, but did serve a Request to Amend.

The tenant disputes that information, indicating that the landlord was served with the Notice of Dispute Resolution Proceeding on September 8, 2023 in person, and has filed a Proof of Service document setting out that date and a signature of the tenant and a witness. The tenant also testified that the landlord lives on the rental property; it is a duplex and the landlord lives next door to the tenant.

Since the landlord is not present to testify, and I am not satisfied that the landlord's agent has any personal knowledge of what the tenant served, I find that the landlord has been served with the hearing package in accordance with the *Residential Tenancy Act*.

I also found that the evidence filed by the landlord on October 5, 2023 is the only evidence of the landlord that should be considered, and the landlord's agent agreed.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy For Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overpayment of rent and security deposit?
- Has the tenant established that rent has been increased contrary to the law?
- Has the tenant established that the landlord has unreasonably withheld consent to assign or sublet?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, specifically with respect to rent increases?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on August 1, 2022 and reverted to a month-to-month tenancy after August 1, 2023, however the tenancy agreement was signed by another tenant (JY). Rent in the amount of \$1,800.00 was originally payable on the 1st day of each month, which was increased to \$1,836.00 and there are no rental arrears. At the outset of the tenancy the landlord collected a security

deposit from the tenant in the amount of \$900.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that the tenant (JY) gave notice to end the tenancy by email, and a copy has been provided for this hearing. It is dated September 12, 2023 and contains an effective date of vacancy of October 31, 2023. The landlord received it on September 14, 2023. That tenant vacated, and the tenant in this matter (JDE) still resides in the rental unit with another roommate.

On April 1, 2023 the tenant (JDE) requested the landlord to allow additional occupants for a few months. The original tenancy agreement Addendum states clearly that a maximum of 2 occupants at any time are permitted in the rental unit. The parties came to an agreement that the 2 additional occupants would cost \$150.00 per person, but no one for the tenants signed a new tenancy agreement. Two roommates moved out within 2 or 3 months.

The landlord's agent is not certain if the tenant (JY) lives in the rental unit. The landlord sent to that tenant a copy of a Notice of Rent Increase, and received the letter ending the tenancy.

This has become a complicated tenancy, and the landlord's agent stepped into this in September, 2023. The landlord's agent served the Notice of Rent Increase, and the landlord asked the landlord's agent to follow through and end the tenancy and not sign a new agreement with the tenant (JDE).

The tenant (JDE) testified that on September 8, 2023 the tenant went to the landlord's front door with the hearing package, and the tenant's brother was there as a witness. A Proof of Service document has been provided for this hearing.

The rental increase that came with the additional occupants was to let the tenant know that if the tenant didn't agree, he would have to move out, and the tenant agreed to pay that. The tenant wasn't given an option and now pays \$1,836.00 per month. The landlord wanted an additional \$150.00 and an additional security deposit.

The tenant was coerced into paying. Rent for April, 2023 in the amount of \$1,800.00 was paid, and on April 8, 2023 the tenant sent an additional \$900.00. On May 1, 2023 the tenant paid \$2,100.00, and in June the tenant paid \$1,650.00, and in the message detail the tenant explained that the amount was \$300.00 less for the overpayment of the security deposit, and since 1 occupant moved out, rent was adjusted to \$1,950.00, less

the \$300.00 security deposit overpayment. The landlord agreed to that. In July the tenant paid \$1,950.00 and in August the rent went back to \$1,800.00 and then the landlord served a rent increase which took effect in November, 2023. Currently, the tenant and his brother reside in the rental unit.

The tenant (JY) moved out in September, 2022.

The tenant (JDE) has suffered a heart attack and his brother arrived to take care of the tenant. The tenant asked that the landlord add the tenant's brother to the lease but the landlord said he wanted another \$150.00 per month. When the tenant disagreed, the landlord refused to add the tenant's brother to the lease. It's a 5 bedroom duplex, and the tenant wants his brother added to the tenancy so he has an address to qualify for a government grant for being the tenant's caregiver.

The tenant seeks monetary compensation for overpayments in rent totaling \$900.00. The tenant did not agree in writing to increase the rent for additional occupants.

The tenant seeks an order that the landlord comply with the *Act* because of illegal rent increases of \$180.00 and given earlier than permitted by law. The tenant did not agree to a 10% increase. The parties had a discussion and the tenant referenced the Residential Tenancy Branch website with the calculator, and recommended that the landlord use the calculator. The landlord came back with a \$36.00 per month increase, but not without a heated debate. The 10% increase was not forced by the landlord in June, 2023, but did occur for the additional roommates, who were boarders. They helped with payment of utilities, all of which are in the tenant's name, so the landlord was not affected. To avoid a hassle, the tenant paid the additional \$150.00 per month for each tenant, but not in writing. The increase in November, 2023 was in the proper amount. The tenant paid the additional amount in April and May, 2023 and received \$300.00 of the overpayment of the security deposit, but not the other \$300.00 overpayment of the security deposit.

The whole thing started with the tenant refusing to go along with the landlord's requests. The tenant has never been late with the rent. The landlord's agent referenced a rent increase in June, but the tenant refused to take it. It got contentious and the tenant only asked to leave safely. Things have been tensed since then, but calm.

The tenant received a notice to end the tenancy by letter, not with a form.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The understanding of the law, in the opinion of the landlord's agent, there is 1 tenancy agreement with a co-tenant, and both are equally responsible for all costs till a new tenancy agreement is entered into or until one of them ends the tenancy. When 1 tenant gives notice to end the tenancy, the tenancy ends for all tenants. The additional security deposit was foolish but only because they wouldn't sign a new tenancy agreement. The original tenancy agreement is still binding on the tenant (JY) as well.

SUBMISSIONS OF THE TENANT:

The tenant has not broken any rules, just resistance to the landlord doing things illegally. There are no damages and the tenant has done work to house. The tenant already had to cancel treatment for heart surgery as a result of this.

Analysis

The tenancy agreement signed on August 1, 2022 contains signatures of the landlord and the tenant (JY) and the tenant (JDE). At the conclusion of the hearing, I advised the parties that since the tenant (JY) vacated in September, 2022 and the landlord has continued to accept rent from the tenant (JDE), the landlord has effectively reinstated the tenancy. I accept that the tenant (JY) didn't give notice to end the tenancy until September 12, 2023 effective on October 31, 2023, however the landlord collected rent for November and December, 2023 without notifying the tenant that the money was being accepted for use and occupancy only.

Therefore, I dismiss the landlord's application for an order of possession. Since the landlord has not been successful with the application the landlord is not entitled to recovery of the filing fee.

Since the tenancy has been reinstated, it is reinstated with 1 tenant only (JDE), and since the other tenant (JY) gave notice and moved out of the rental unit, the tenancy no longer refers to that tenant.

I also advised the parties that a landlord may not accept more than 1 security deposit from a tenant, regardless of any rent increases, and the tenant may reduce rent for a future month by \$300.00 as recovery of the overpayment according to the law.

A landlord may only increase rent in accordance with the law, which states:

13 (2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies.

In this case, the tenancy agreement does not specify that the rent varies with the number of occupants or by what amount it might vary. The law also states:

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.

In this case, the landlord has not made an application for dispute resolution requesting the director's approval of a rent increase greater than the amount calculated under the regulations. Therefore, I find that the increases for additional occupants are not lawful, and the tenant has established a claim of \$600.00, being \$150.00 for each of 2 additional occupants for 2 months. The landlord may not increase the rent for the tenant's brother who now resides in the rental unit with the tenant (JDE), because the tenancy agreement does not provide for that.

The tenant has also applied for an order permitting the tenant to assign or sublet. However, as I explained to the parties during the hearing, and assignment or sublet means that the tenant vacates the rental unit and assigns all rights to another tenant or becomes the landlord of a subtenant. In this case, the tenant has no intention of vacating the rental unit, and I dismiss that portion of the tenant's application.

The tenant's application also includes a request for an order that the landlord comply with the *Act* or the tenancy agreement with respect to rent increases. I order that the landlord refrain from requesting more money for additional occupants and refrain from increasing the rent except as provided in Section 43 of the *Act* as set out above.

Since the tenant has been partially successful with the application, the tenant is also entitled to recover the \$100.00 filing fee from the landlord.

I grant a monetary order in favour of the tenant as against the landlord in the amount of \$1,000.00, which includes recovery of rent for additional occupants (\$600.00) and the overpayment of the security deposit (\$300.00), and recovery of the filing fee (\$100.00). I order that the tenant be permitted to reduce rent for a future month by \$1,000.00, or may serve the order on the landlord and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,000.00, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

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: December 12, 2023

Residential Tenancy Branch