

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Landlord and the Tenants under the *Residential Tenancy Act* (the "Act").

The Tenants' Application for Dispute Resolution, filed on May 28, 2024, is for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- an order regarding the Tenants' dispute of a rent increase by the Landlord under section 41 of the Act
- an order allowing the Tenants to assign or sublet because the Landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord's Application for Dispute Resolution, filed on June 5, 2024, is for:

- an order to end the tenancy for cause pursuant to section 47 and 55
- a Monetary Order for unpaid rent under section 67 of the Act

Tenant A.L. and Tenant K.K. attended the hearing for the Tenants

Landlord J.M. attended the hearing for the Landlord

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenants acknowledged service of the Landlord's Proceeding Package and are duly served in accordance with the Act.

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Service of Evidence

The Tenants acknowledged service of the Landlord's evidence and I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act.

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Preliminary Issue- Partial Withdrawal of Tenant's Application

At the outset of the hearing, the Landlord and the Tenants agreed that the Tenants vacated the rental unit on July 1, 2024. The parties therefore agreed to withdraw the following issues:

- The Tenants' application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act;
- The Landlord's application for an order to end the tenancy for cause pursuant to section 47 and 55;
- The Tenants' application for an order allowing the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act; and
- The Tenants' application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act.

I exercise my authority under section 62(4)(b) of the Act to dismiss the above noted applications.

Issues to be Decided

Are the Tenants entitled to an order regarding the Tenants' dispute of a rent increase by the Landlord under section 41 of the Act?

Is the Landlord entitled to a Monetary Order for unpaid rent under s.67 of the Act?

Are the Tenants entitled to recover the filing fee for this application from the Landlords?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Tenants claim that the Landlord owes them \$4,524.00 as a result of illegal rent increases during the tenancy. The Landlord claims that the Tenants owe him \$3,415.00 for one month of unpaid rent because the Tenants did not give the Landlord notice to end this tenancy and he suffered a loss of rent because he was delayed in re-renting the rental unit.

Tenant A.L. testified that this tenancy began in September 2020, the Landlord was not certain when the tenancy began. At the start of the tenancy rent was \$3,000.00 per month, the parties did not agree on the day of the month which rent was due. The parties did not sign a tenancy agreement at the start of the tenancy. Tenant K.K. was not living in the rental unit at the start of the tenancy, he moved in August 2022. There were no security or pet damage deposits.

On March 21, 2023, the Landlord sent the Tenants an email stating that rent would increase to \$3,300.00 starting in June 2023. The Tenants responded that they could only afford a 5% increase which would be \$3,150.00. The Tenants testified that the Landlord said he would evict the Tenants if they did not agree to the rent increase.

The Landlord testified that the Tenants initially refused to pay any increase in March 2023. The Landlord then decided that this tenancy would have to end because the Tenants were late making rent payments.

The Landlord provided emails which show that the Landlord emailed the Tenants on March 28, 2023, stating that the Landlord was going to end the tenancy due to late rent payments. The Tenants responded by email indicating that they would agree to pay \$3,300.00 rent per month if the Landlord would agree to continue the tenancy. The Landlord agreed and stated that he would send over the documents.

The Tenants testified that they were stressed about the increase, but they did accept the new rate of rent because they were afraid that they would be homeless if they did not. The Tenants did not file a dispute about the 2023 rent increase.

From and after March 21, 2023, the Tenants repeatedly asked the Landlord to provide them with a tenancy agreement as they believed that there was nothing they could do without a written tenancy agreement.

On November 9, 2024 the Landlord provided the Tenants with a tenancy agreement to sign. The rate of rent was \$3,300.00 per month due on the first day of the month. This tenancy agreement stated that the tenancy started on April 1, 2023, was for a fixed term until March 31, 2024. The Agreement was signed by the Tenants on November 10, 2024.

The Landlord testified that he believed the new lease agreement was a compromise between the parties, and that he did not give the Tenants an ultimatum to accept the rent increase or be evicted.

The Tenants testified that they did not agree to 'back date' the tenancy agreement but felt they had no choice but to sign the agreement, and pay the increased rate of rent, or the Landlord would evict them.

The Landlord issued a notice of rent increase on February 1, 2024, saying that rent would increase on April 1, 2024, to \$3,415.00 per month. The Landlord used the

Residential Tenancy Branch's approved form. The Tenants testified that they did not want to pay this increased amount, but they believed they had to. The Tenants paid \$3,415.00 in April, May and June 2024.

On May 19, 2024, the Tenant A.L. wanted to remove K.K. as a Tenant and add a new person to the tenancy agreement. The Landlord offered Tenant A.L. a new lease agreement with rent at \$4,500.00.

On May 24, 2024, the Landlord issued a Notice to End Tenancy for Cause claiming that the Tenants had repeatedly paid rent late (the "One Month Notice"). The Tenant's applied to dispute the One Month Notice and served the Landlord with the Notice of Dispute Proceedings.

However, the Tenants vacated the rental unit on July 1, 2024, instead of waiting for this hearing. The Tenants notified the Landlord that they vacated the rental unit on July 2, 2024. The Tenants did not notify the Landlord in advance that they would not be disputing the One Month Notice and did not tell the Landlord in advance that they would be vacating the rental unit.

The Landlord listed the rental unit for rent as soon as the Tenants told him they had vacated the rental unit. The unit was re-rented on July 18, 2024.

Analysis

Are the Tenants entitled to an order regarding the Tenants' dispute of a rent increase by the Landlord?

The Tenants claim that they are entitled to compensation for the rent overpayments they made after the Landlord illegally raised the rent twice – once in April 2023, and then in April 2024.

Section 41 of the Act states that a Landlord must not increase rent except in accordance with sections 42 and 43 of the Act. Sections 42 and 43 allow for a rent increase if it is made at least 12 months after the effective date of the last rent increase, served in the approved form, at least 3 months before the effective date of the increase, in an amount is calculated in accordance with the regulations, or for an amount agreed to by the Tenants and the Landlord in writing. If a notice of rent increase does not comply with the timelines under section 42, then the notice of rent increase will take effect on the earliest date that does comply. If a Landlord collects rent that does not comply section 42 and 43, then the Tenant may deduct the increase from rent or otherwise recover the increase.

The 2023 Rent Increase

The parties signed a tenancy agreement which stated that the tenancy began on April 1, 2023, and the rate of rent was \$3,300.00. I find that the rent increase from \$3,000.00 to \$3,300.00 is an amount agreed to by the Tenants and the Landlord in writing under section 43(1)(c). However, this agreement was signed on November 10, 2024. The rent increase that was paid from April 2023 to November 2023 was not agreed to in writing when it was imposed. Though the parties 'backdated' the agreement to state that the

tenancy started on April 1, 2023, there is no evidence that the Tenants had agreed in writing to the rent increase prior to November 10, 2023. I therefore find that the rent increase imposed on the Tenants from April to November 2023 was not valid and was of no force or effect.

The effective date of the 2023 rent increase was December 1, 2023, because that was the first date that rent was due after the parties agreed in writing to the rent increase.

Under section 43(5) I find that the Tenants are entitled to compensation for the rent overpayments made from April to November 2023. The rent increase was \$300.00 per month, so the Tenants are entitled to compensation of \$2,400.00 for the overpayments in 2023 ($\$300.00 \times 8 \text{ months} = \$2,400.00$)

The 2024 Increase

The Landlord issued the notice of rent increase to the Tenants on February 1, 2024. Section 42 (1) of the act states that the Landlord must not impose a rent increase for at least 12 months after the effective date of the last increase. As I have found that the effective date of the last rent increase was December 1, 2023, the Landlord could not have imposed a further increase until after December 1, 2024. Therefore, the rent increase of \$115.00 that the Tenants paid in April, May and June 2024 were overpayments of rent.

I find that the Tenants made \$345.00 in overpayments of rent in 2024, and are entitled to compensation from the Landlord in this amount ($\$115.00 \times 3 \text{ months} = \345.00)

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenants have established a claim for \$2,745.00 in damage or loss under the section 43(5) of the Act.

($\$300.00 \text{ over payments for 8 months in 2023} = \$2,400.00$)

($\$115.00 \text{ over payments for 3 months in 2024} = \345.00)

($\$2,400.00 + \$345.00 = \$2,745.00$)

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 26 of the Act states that the Tenants must pay rent to the Landlord, regardless of whether the Landlord complies with the Act, regulations or tenancy agreement, unless the Tenants have a right to deduct all or a portion of rent under the Act.

Under section 43(5) if a Landlord has collected a rent increase that was not authorized by the Act, then the Tenants may deduct that amount from their rent.

Section 45(1)(a) of the Act provides that the Tenants may give the Landlord notice to end a periodic tenancy on a day that is at least a month after the Landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Residential Tenancy Policy Guideline 3 at section C states that if the tenant vacates the rental unit “before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement.” Further, this guideline states that compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

The Landlord issued the One Month Notice, to the Tenants the effective date of which was set to be June 30, 2024. The Tenants filed an application to dispute the One Month Notice. The Landlord was not able to list the rental unit for rent until he was able to determine when, or if, the Tenants would vacate the rental unit. The Tenants did not give the Landlord any notice of their intention to vacate the rental unit prior to July 2, 2024.

The Landlord listed the rental unit for rent as soon as reasonably possible once he was given notice by the Tenants that the rental unit was vacant. The Landlord re-rented the rental unit in a reasonable amount of time. The Landlord mitigated his loss by making reasonable efforts to re-rent the rental unit.

Based on the evidence before me, I find that the Tenants were obligated to notify the Landlord that they would vacate the rental unit in accordance with the One Month Notice. As a result of the Tenant’s failure to notify the Landlord, the Landlord suffered a loss of 17 days of rent in the amount of \$1,844.33.

$\$3,300.00 * 12 = \$39,600.00$ per annum
 $\$39,600.00 / 365 = \112.27 per day
 $\$108.49 * 17 = \$1,844.33$

I find that the Tenants should have paid rent to the Landlord until the rental unit was re-rented. However, the Tenants were entitled to deduct the overpayments of rent from the Landlord under section 43(5) of the Act. Therefore, I find that Tenants were entitled to deduct \$1,84.33 from their last month of rent.

Are the Tenants entitled to recover the filing fee for this application from the Landlords?

As the Tenants were successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$1,000.67** under the following terms:

Monetary Issue	Granted Amount
Rent Overpayments \$300.00 x 8 months = \$2,400.00 \$145.00 x 1 month = \$ 345.00	2,745.00
Less 17 days rent that the Tenants withheld from the Landlord	-\$1,844.33
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$1,000.67

The Tenants is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims 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 Act.

Dated: August 22, 2024

Residential Tenancy Branch