Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a determination regarding the dispute of an additional rent increase by the landlord pursuant to section 43; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant testified that he served the landlord with the dispute resolution package on 29 May 2015 by registered mail. The tenant provided me with a Canada Post customer receipt that showed the same. The landlord admitted service of the tenant's dispute resolution package. On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Preliminary Issue – Tenant's Evidence

The landlord stated that she had not received the tenant's evidence. The tenant's evidence consisted of a letter dated 1 June 2015 and a rent cheque dated 1 June 2015.

This evidence is not relevant to the tenant's application and on that basis is excluded.

Preliminary Issue – Prior Application

This tenancy was the subject of prior cross applications.

The landlord applied to enforce a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that was issued 18 March 2015 (the March Notice) and to recover unpaid rent amounts. The landlord failed to attend that hearing. The landlord's application was dismissed without leave to reapply.

The tenant applied, among others, to dispute an additional rent increase and to cancel both the March Notice. The tenant's application to cancel the March Notice was allowed. The tenant's application to dispute the additional rent increase was dismissed with leave to reapply.

The landlord has not applied for review of the prior decision.

As the tenant's application to dispute the additional rent increase was dismissed with leave to reapply, I am not prevented from considering his reapplication.

Preliminary Issue – Scope of Application

At the commencement of the hearing I confirmed with the tenant that his application was to dispute an additional rent increase and to recover his filing fee. I confirmed with the tenant that he had not applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated 14 May 2015 (the May Notice).

The landlord provided a letter dated 3 June 2015:

> *We attach herewith Evidence respecting the above noted (sic) Dispute Resolution Hearing scheduled for [date redacted]*
>
> *…*
>
> *We responded to unpaid rent by serving a Termination Notice May 14, 2015. Regardless of numerous verbal and written warning to provide written confirmation of documentation necessary to effect a recalculation, [the tenant] has not provided said documentation nor paid his rent in full.*
>
> *We seek to end the Tenancy, have the Monetary Order upheld and our filing fee refunded.*
>
> [emphasis added]

The landlord also provides a background sheet wherein she sets out that the issues to be decided are "Should the Landlord's Notice to End Tenancy be upheld?" and "Should the Monetary Order be granted?"

The landlord did not file an application of her own. I informed the landlord that she could not apply for these remedies at the tenant's application. The landlord made submissions that she could, in fact, make such an application. I informed the landlord at the hearing that I could not consider her application and told her I would provide written reasons. These are the written reasons.

Subsection 59(2) of the Act sets out how a party may begin proceedings:

> (2) An application for dispute resolution must
>
> (a) be in the applicable approved form,
>
> (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and
>
> (c) be accompanied by the fee prescribed in the regulations.

As can be seen from subsection 59(2), the only way to commence a proceeding before this Branch is to file a dispute with full particulars and after paying the prescribed fee. The landlord has not made any application for dispute resolution of her own. As there is no application of the landlord before me in respect of any issues she has raised. Therefore, I have no authority to consider her request for a monetary order for the outstanding rent amounts as it is not an issue that is before me.

The only basis by which an arbitrator may grant an order of possession is in accordance with section 55 of the Act:

> (1) <u>If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy</u>, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
>
> (a) the landlord makes an oral request for an order of possession, and
>
> (b) the director dismisses the tenant's application or upholds the landlord's notice.
>
> (2) A landlord may request an order of possession of a rental unit in any of the following circumstances <u>by making an application for dispute resolution</u>:
>
> (a) a notice to end the tenancy has been given by the tenant;
>
> (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
>
> (c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;
>
> (d) the landlord and tenant have agreed in writing that the tenancy is ended.
>
> …
>
> [emphasis added]

The issue of the May Notice is not before me: the tenant has not applied to cancel the May Notice; the landlord has not made an application for dispute resolution. As neither of the available preconditions exists, the landlord's request for an order of possession must fail.

The landlord did not pay any filing fee in respect of this application. As such, there is no filing fee of which I could order repayment in the event the landlord was successful, which she was not.

The only issues before me in this application are those raised by the tenant in his application.

Issue(s) to be Decided

Was the rent increase issued in accordance with the Act? Is the tenant entitled to recover his filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began in August 2012. The most recent tenancy agreement was entered into on 23 January 2014. The tenancy provides for calculation of rent as a proportion of income. The tenancy agreement is between the tenant and a society.

The landlord is an agent of the society. The landlord testified that the society has an agreement regarding the operation of the residential property with the British Columbia Housing Management Commission.

I was provided with the tenant's most recent application for rent subsidy dated 1 August 2014. The landlord testified that there was a typographical error and that the economic rent should have read $827.00. The tenant's rent was determined as $777.00.

The tenant submits that he should pay $333.00 in monthly rent as he had been and that the increase to $777.00 is an "unreasonable" rent increase.

Analysis

The tenant disputes his increase in rent from $333.00 to $777.00.

The law regarding rent increases is set out in sections 41 – 43 of the Act. Section 2 of the *Residential Tenancy Regulations* (the Regulations) exempts certain tenancies from the rent increase provisions:

> Rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act *[assignment and subletting, rent increases]* if the rent of the units is related to the tenant's income:
>
> (a) the British Columbia Housing Management Commission;

…

(g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:
  (i) the government of British Columbia;
  (ii) the British Columbia Housing Management Commission;
  (iii) the Canada Mortgage and Housing Corporation.

On the basis of the landlord's uncontradicted testimony, I find that the housing society has an agreement with the British Columbia Housing Management Commission. I find on the basis of the parties' testimonies, that the tenant's rent is calculated on the basis of his income. On the basis of this evidence, this tenancy is excluded from the application of the provisions in sections 41 to 43 of the Act by operation of subparagraph 2(g)(ii) of the Regulations. The tenant's claim to dispute the additional rent increase is dismissed without leave to reapply.

As the tenant has not been successful in his application, he is not entitled to recover his filing fee from the landlord.

Conclusion

The tenant's application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 14, 2015

Residential Tenancy Branch