



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, DRI, FF

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated February 13, 2019
- b. An order cancelling a Notice of Rent Increase dated May 15, 2018.
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on February 13, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord's agent on or about February 21, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated February 13, 2019?
- b. Whether the tenant is entitled to an order cancelling a Notice of Rent Increase dated May 15, 2018?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

On July 6, 2016 the parties entered into a month to month written tenancy that provided that the tenancy would commence on July 6, 2016 and that the rent was \$410 per

month payable in advance on the first day of each month. The tenant paid a security deposit of \$210.

On October 1, 2017 the landlord gave the Tenant a Notice of Rent Increase effective January 1, 2018. The Tenant refused to pay the increase on January 1, 2018 stating that he had not been given 3 months Notice as required by the Act. The landlord agreed.

On May 15, 2018 the landlord posted a second Notice of Rent Increase that increased the rent by \$15 per month from \$410 to \$425 effective September 1, 2018. The rent increase within the 4% permitted by the Act.

The tenant refused to pay the rent increase (the \$15 a month) when the landlord came to collect the rent on September 15, 2018.

The landlord testified the tenant has failed to pay the \$15 rent increase and that \$90 is owed in outstanding rent from September 1, 2018 to February 2, 2019.

Tenant's Submission:

The tenant does not dispute that he was served with the Notice of Rent Increase on May 15, 2018. However he makes the following submissions:

- a. The Notice of Rent Increase is invalid because the landlord's address is incorrect. It sets out a number as the street address of the landlord. This number is in fact a box number.
- b. The landlord failed to identify the date the last rent increase came into effect or the date the rent was established.

The landlord submits that she did not fill this part in because there was no previous rent increases.

Analysis:

After carefully considering all of the evidence and the submission of both parties I determined that the Notice of Rent Increase was valid and there is no basis for setting it aside for the following reasons:

- a. I do not accept the submission of the Tenant that the mistake of the landlord in placing a box number in the box which was for a street number invalidates the Notice. The tenant was not prejudiced and was aware of where and how the

landlord could be served. He served the within Application for Dispute Resolution on the landlord's agent without difficulty.

- b. I do not accept the submission of the Tenant that the failure to file out the box setting out the Date of Last Rent Increase invalidates the Notice of Rent Increase. Section 40 to 43 of the Act provides as follows:

Meaning of "rent increase"

40 In this Part, "rent increase" does not include an increase in rent that is

(a) for one or more additional occupants, and

(b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [requirements for tenancy agreements: additional occupants].

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

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.

(4) [Repealed 2006-35-66.]

(5) 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.

The Tenant was not prejudiced by the failure of the landlord to fill in this section. At all material times he was aware there had been no previous rent increase. He does not dispute receiving the Notice of Rent Increase on May 15, 2018. The Act provides that a landlord must not increase the rent for 12 months, must use the approved form and that the Notice is not effective until 3 months after service at the earliest. It does not provide that the Notice of Rent Increase is invalid if there was an error in filling it out.

- c. I find support for this determination from section 42(4) which contemplates an error in the filling out of the form and provides:

42(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

I determine this is significant as the Act recognizes that there may be errors in filling the form but that those errors are not necessarily fatal.

- d. Similarly, I also find support from section 68(1) of the Act giving the Director the right to amend a Notice to End Tenancy where the person receiving the Notice knew or should have known the information from the notice and in the circumstances it is reasonable to amend. While there is a difference between a Notice to End Tenancy and a Notice of Rent Increase I determined that the intent of the Act recognizes that it deals with lay people and that it should not be too legalistic. That section provides as follows:

Director's orders: notice to end tenancy

68 (1) If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

Determination and Orders:

As a result I determined the Notice of Rent Increase is valid and that the rent commencing September 1, 2018 is \$425 per month. The tenant owes \$90 in outstanding rent from September 1, 2018 to February 2, 2019. As a result I dismissed the tenant's application to cancel the 10 Notice to End Tenancy and the application for an order cancelling the Notice of Rent Increase. .

The rent has been paid for April 2019. I order that the tenancy shall end on April 30, 2019. The application of the tenant to recover the cost of the filing fee is also dismissed.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective April 30, 2019.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

This decision is final and binding on the parties.

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: April 01, 2019

Residential Tenancy Branch