Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, DRI-ARI-C, LRE, AS, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order to dispute a rental increase, pursuant to section 43;
- an order to restrict or suspend the landlord's right of entry, under section 70;
- an order for the landlord to allow an assignment or sublet when permission was unreasonably denied, pursuant to section 65; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant JB (the tenant) and landlord GC (the landlord) attended the hearing. Witness for the landlord TC also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the dispute of a rental increase is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for the rental increase. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except the dispute of rental increase which will be decided upon.

Issues to be Decided

Is the tenant entitled to:

- an order to dispute a rental increase?
- an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed that monthly rent is due on the first day of the month. The landlord purchased the rental unit and had possession on May 01, 2022.

The tenant affirmed the tenancy started on November 03, 2018, monthly rent was $1,300.00 until April 30, 2022 and increased to $2,500.00 on May 01, 2022. The landlord collected and holds in trust a security deposit of $600.00 and a pet damage deposit of $600.00.

The landlord stated the tenancy started on May 01, 2022, monthly rent is $2,500.00 and the landlord received and currently holds in trust a security deposit of $550.00.

The landlord submitted a tenancy agreement signed by the parties on May 01, 2022 indicating that monthly rent is $2,500.00.

The tenant testified the landlord proposed rent in the amount of $2,500.00 on April 27, 2022 and the tenant agreed to this amount under duress because he did not have enough time to find a new rental unit. The tenant has paid $2,500.00 every month since May 01, 2022 and submitted this application on October 03, 2022 because that was when he learned the landlord could not have increased the rent.

The landlord said that his agent served a two month notice to end tenancy for landlord's use (the Notice) in February 2022, as the landlord intended to occupy the rental unit. The tenant asked to cancel the Notice and suggested a higher rent, the landlord suggested the amount of $2,500.00 in February 2022 and the parties signed the tenancy agreement on May 01, 2022. Later the landlord informed the tenant suggested the amount of $2,500.00 in February 2022.

The tenant affirmed he contacted the landlord's agent and suggested rent in the amount of $2,000.00 and the landlord's agent informed the landlord would only decide if he agrees to cancel the Notice on April 27, 2022. The tenant could not find a new place to live between February and April 27, 2022 and felt forced to accept the amount suggested by the landlord of $2,500.00.

Witness TC is a real estate agent and assisted the landlord when he purchased the rental unit. TC stated the tenant contacted the seller and asked for the landlord's contact information, as the tenant would like to ask the landlord to cancel the Notice and continue the tenancy.

The landlord submitted text messages dated September 17, 2022:

> Tenant: I still don't and haven't agreed with the fact that you illegally increase the rent over 40% the legal amount you were allowed to increase is 2.1 percent…I would like your lawyer to contact me please.
> Landlord: You guys contacted my realtor as you wanted to stay over there. You were not forced to live there. You guys agreed to stay and called me everyday as you wanted to live there with the agreed amount.

Analysis

Sections 41, 42 and 43 of the Act state:

> 41 **A landlord must not increase rent except in accordance with this Part.**
> 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.
> 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.
>
> (emphasis added)

The landlord is subject to section 43(1) of the Act.

Duress of coercion refers to situations where a person performs an act as a result of violence, threat or other pressure against the person. Duress is a pressure exerted upon a person to coerce that person to perform an act that he or she ordinarily would not perform.

Justice Rogers writes in Stein v. Schommer, 2006 BCSC 1551:

> [16]There is nothing in Mr. Schommer’s evidence that could possibly underwrite the classic elements of the defence of duress. However, the common law is a living thing, and in the years since Saxon, the circumstances under which duress might be said to exist have evolved. There is now a variant of the defence called “economic duress”. The Ontario Court of Appeal described the test for this sort of thing in Stott v. Merit Investment Corp. (1988), 1988 CanLII 192 (ON CA), 63 O.R. (2d) 545, at p. 561:
>
> The term “economic duress” as used in recent cases, particularly in England, is no more than a recognition that in our modern life the individual is subject to societal

> pressures which can be every bit as effective, if improperly used, as those flowing from the threats of physical abuse. It is an expansion in kind but not class of practices that the law already recognizes as unacceptable such as those resulting from undue influence or from persons in authority. **But not all pressure, economic or otherwise, is recognized as constituting duress. It must be a pressure which the law does not regard as legitimate and it must be applied to such a degree as to amount to "a coercion of the will", to use an expression found in English authorities, or it must place the party to whom the pressure is directed in a position where he has no "realistic alternative" but to submit to it,** to adopt the suggestion of Professor Waddams…
>
> [17] That test has been referred to with approval by this court: Atkinson v. Klassen et al., 2000 BCSC 1831.
>
> (emphasis added)

The parties offered conflicting testimony about when the amount of rent was proposed. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The applicant did not provide any documentary evidence to support his claim that the landlord proposed to increase rent on April 27, 2022. The applicant did not call any witnesses.

I accept the undisputed testimony that the landlord served the Notice in February 2022, the tenant could not find a new place to live and agreed to a rent increase in writing on May 01, 2022 to cancel the Notice. The tenant admits that he suggested a rent increase of $2,000.00 and that he looked for a new rental unit between February and April 27, 2022. The September 17, 2022 text message indicates the tenant contacted the landlord's agent because he wanted to continue the tenancy. Instead of disputing the Notice the tenant agreed to a rent increase in writing on May 01, 2022.

Considering the above, I find the tenant failed to prove, on a balance of probabilities, that the landlord exercised duress against the tenant to sign the tenancy agreement on May 01, 2022 increasing rent to $2,500.00.

Thus, I find the May 01, 2022 tenancy agreement is a valid new tenancy agreement that established rent in the amount of $2,500.00 because the landlord cancelled the Notice, in accordance with section 43(1)(c) of the Act. I find the tenant failed to prove, on a balance of probabilities, that the landlord breached section 41 of the Act. I dismiss the tenant's claim.

As the tenant was not successful, the tenant must bear the cost of the filing fee.

Conclusion

I dismiss the tenant's claim without leave to reapply.

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: February 14, 2023

Residential Tenancy Branch