



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Cancellation of a 10-day Notice to End Tenancy for unpaid rent for the month of March 2023 [the 'Notice'].
2. Compel the landlords to comply with the *Residential Tenancy Act* by amending an addendum to the tenancy agreement [the 'Agreement'] and by recognizing one of the Applicants as a tenant under that Agreement ['Tenant Recognition'].
3. Reimbursement for the \$100.00 filing fee for their application.

The landlords appeared at the continuation of this hearing on 17 April 2023. The tenants also appeared, along with an advocate.

Issue(s) to be Decided

In my interim decision in this dispute, I addressed the issue of Tenant Recognition. Now I am left with the following issues:

Should I cancel the Notice?

Should I impose amendments to the Agreement?

And should the landlords reimburse the tenants for their application?

Background and Evidence

Last November, the landlords entered into the Agreement with the tenants. As part of this Agreement, the tenants agreed to pay the landlords \$1,700.00 each month as rent. The tenants also agreed to pay \$800.00 as a security deposit [the 'Deposit'].

The tenants told me that they paid the Deposit in two stages: \$500 in November last year; and \$300.00 in December.

The landlords told me that before March rent was due, they learned that the tenants did not intend to pay the full amount of rent for that month.

The parties testified to the following, on which their evidence agreed:

- on 1 March, the landlords came to the rental unit to collect rent;
- the tenants gave the landlords \$1,683.00 in cash;
- the tenants refused to pay the full rent because they believed they had paid \$17.00 too much for the Deposit; and so
- the landlords immediately gave the tenants the Notice, alleging that the tenants had failed to pay the full rent for March.

The tenants alleged that the landlords issued the Notice in order to get new tenants into the unit who would pay more for rent. The landlords denied this.

In support of this allegation, the tenants referred me to a text exchange between them and the landlords. In this exchange, the landlords justified a planned rent increase for later this year of \$200.00 [the 'Increase']. In making this justification, the landlords claimed that they could rent out the unit for \$2,000.00, rather than only the \$1,900.00 they were seeking from the tenants.

The tenants argue that this is an illegal Increase, and imply that its' illegality indicates the landlords' improper motive in issuing the Notice.

The parties also told me that the tenants had paid rent for April.

Analysis

Section 26 (1) of the *Residential Tenancy Act* places a positive obligation upon the tenants to pay rent, with which the tenants have not complied.

But section 19 (2) of the Act empowers tenants to deduct from rent any overpayment of a security or pet damage deposit. In this case, however, there was no evidence that the tenants overpaid their Deposit.

The Agreement specified that the Deposit was to be \$800.00. Section 19 (1) of the Act only prohibits deposits in excess of 50% of rent. As the parties agreed:

- rent was \$1,700.00; and
- as the \$800.00 Deposit is less than 50% of this rent;

the tenants would only be entitled to withhold rent if they had paid more than \$850.00 for the Deposit. But the tenants' evidence was that they paid only \$800.00.

As a result, the tenants were not entitled to withhold \$17.00 of March rent.

The tenants allege that the real motivation of the landlords to issue the Notice is a scheme to bring in new tenants who would pay more rent. The text from the landlords (in which they claim they could rent out the unit for more) is not compelling evidence of such a scheme: it is part of an exchange between the landlords and the tenants in which the landlords are justifying the Increase.

I accept the tenants' argument that the Increase is illegal. While the landlords argued that the tenants had agreed to the Increase at the time of entering into the Agreement, section 42 of the Act forbids any such increase during the first 12 months of a tenancy. That means the landlords cannot increase the rent under this Agreement until November 2023, and must issue a proper notice three months in advance in order to do so. While the tenants may have consented in the Agreement to the *amount* of the Increase, the landlords could not legally have asked the tenants to consent to any such Increase before November 2023.

But this Increase is, in the context of the Notice, a red herring. It does not change the fact that the tenants failed to pay the full rent for March. And I do not find it supports an allegation that the landlords improperly issued the Notice: it just highlights the landlords' misinterpretation of section 42 of the Act.

The landlords, therefore, were entitled to issue the Notice, and so there is no basis for me to cancel that Notice.

As I have found that the tenancy is at an end, there is no need for me to address the tenants' application to amend the Agreement.

And as the tenants failed in their application, I will not order that the landlords reimburse them for the cost of this application.

Conclusion

As the tenants have failed to pay rent, section 55 (1) of the Act requires that I make an Order of Possession in favour of the landlords. This order is effective two days after the landlords serve it upon the tenants. If the tenants or any occupant of the rental unit fail to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

The parties must take note that if the landlords serve this order upon the tenants on a date that results in the tenants having to vacate the unit before the end of April, then the tenants are entitled to a reimbursement of the rent they paid for April on a *pro rata* basis.

I also order that the tenant pay to the landlord \$17.00 for unpaid rent *per* section 55 (1.1) of the Act. I authorise the landlord to retain \$17.00 of the tenant's security deposit of \$800.00 in satisfaction of this sum *per* section 72 (2) (b) of the Act.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the *Residential Tenancy Act*.

Dated: 19 April 2023

Residential Tenancy Branch