Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes DRI, FFT

Introduction

The Applicant filed for dispute resolution on January 4, 2023, seeking to dispute a past rent increase, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on April 28, 2023. In the conference call hearing I explained the process and provided the parties that attended the opportunity to ask questions, present oral testimony and make submissions during the hearing. At the start of the hearing, each party confirmed they received the documentary evidence of the other.

Preliminary Matter – jurisdiction

Both participants provided a copy of the tenancy agreement they had in place. The agreement started on October 4, 2014. The agreement itself is titled: "Tenancy Agreement for [premises name] (Burrard Indian Reservation)".

Paragraph 19 in the body of the agreement reads as follows:

> RESIDENTIAL TENANCY ACT DOES NOT APPLY – As the Premises are located on the Burrard Indian Reservation, the Residential Tenancy Act of British Columbia does not apply to this Lease or the Premises.

In the hearing, the Tenant stated they did not remember this particular clause. The Landlord stated this agreement was provided to them when they purchased the property, and they used the form for the purposes of this tenancy.

In the Landlord's written statement, they submitted: "The understanding has been that this tenancy us under the First Nation Sublease governed by the Indian Act and the common law." Further:

> The [Tenant] agreed and signed the Tenancy Agreement For [premises name] (Burrard Indian Reservation). The signed Tenancy Agreement explicitly indicated this premises is governed by the Sublease, Bylaws and Rules of the Homeowners Corporation . . . per Clause 7 that the Residential Tenancy Act does not Apply as the premises are located on the Burred [*sic*] Indian Reservation per Clause 19.

And:

> For years, it has been [the Tenant] and I, our mutual understanding and agreement that RTB does not apply to this tenancy. We had never referred to the RTA on the agreed terms nor on the rent increase on every renewal. The Tenancy Agreement . . . Template was provide by the solicitor . . . who acted on my purchase of this premises in September, 2013. The solicitor specifically highlighted that RTA does not apply to this premises at the time.

The *Residential Tenancy Policy Guidelines* are in place to provide statements of the policy intent of the *Act*. In particular, *27: Jurisdiction* is specific to the present situation:

> Rental units located on "Lands reserved for Indians" ("Reserve Lands"), fall under Federal legislative power (section 91(24) of the Constitution Act, 1867). The Court of Appeal has held that provincial legislation cannot apply to the right of possession on Reserve Lands. In *Sechelt Indian Band v. British Columbia* (2013 BCCA 262), the Court held that the Residential Tenancy Act ("RTA") . . . [is] inapplicable to tenancy agreements on Reserve Lands where the landlord is an Indian or Indian Band.

The guideline further notes in particular:

> The director. . . has no jurisdiction on Reserve Lands if:
> - The landlord is an Indian or Indian Band; **or**
> - The dispute is about use and possession.
>
> The director may have jurisdiction on Reserve Lands if:
> - The landlord is not an Indian or Indian Band; **and**
> - The dispute is not about use and possession.

Based on this guideline, I find I have jurisdiction to hear the matter. The Landlord did not present that they are an "Indian" or "Indian Band" (as the terms are defined by Canada's *Indian Act*), and this Tenant's Application was not about use or possession of the rental unit. The Landlord did not provide local bylaws or other corporation rules that provide legal authority to definitively state that the *Act* does not apply to this tenancy or this tenancy agreement.

Preliminary Matter – Landlord's claim for compensation

In their 4-page written submission, the Landlord listed various amounts, as reimbursement for rent they feel is owing from the Tenant, as well as damage in the rental unit. The Landlord did not file a cross-application in this matter; therefore, I give these issues no consideration in this matter.

Issues to be Decided

Did the Landlord increase the rent in accordance with s. 41 of the *Act*?

Are the tenants entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Are the tenants entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant and Landlord both presented a copy of the tenancy agreement they had in place at the start of this tenancy. There were yearly re-signings in October each year, as follows:

- first agreement, Oct. 4, 2014 to Oct. 4, 2015 at $1,700 per month, and Oct. 5, 2015 to Oct. 4, 2016, at $1,750 per month
- Oct. 6, 2016 to Oct. 4, 2017, at $1,850 per month
- Oct. 5, 2017 to Oct. 4, 2019, at $1,950 per month from Oct. 5, 2017, and $2,050 per month from Oct. 5, 2018
- Oct. 4, 2019 to Oct. 3, 2021, at $2,150 per month from Oct. 4, 2019, and $2,250 per month from Oct. 4, 2020
- Oct. 4, 2021 to Oct. 3, 2023, at $2,350 per month from Oct. 4, 2021, and $2,450 per month from Oct. 4, 2022

In the hearing, the Tenant noted that the rent increased during a prohibition against rent increases in line with the public-health-measures in place at the time. The Tenant discovered, according to the Residential Tenancy Branch information, that there are set percentages for

yearly rent increases. This regular increase of $100 was “arbitrary” from the Landlord, and the Tenant “didn’t know any better at the time”.

The Tenant stated on their Application of January 4, 2023 to the Residential Tenancy Branch:

> I am disputing my rental increase from October 3, 2016 to January 2023. After recently speaking with someone at the RTB it was brought to my attention that the rent increases I incurred from my landlord were more than the annual allowable increase as indicated on the RTB Website. My monthly rent has been increased yearly $100 per month, and it was not based on the allowable percentage increase. The rental increases were not submitted on the correct rent increase form number RTB - 7.

On their Application, The Tenant specified the amount of $4,000 as the amount they are requesting as compensation.

In their written statement, the Landlord provided that it was the Tenant who proposed a $100 rent increase in 2016. The Tenant and Landlord followed this pattern, signing agreement extensions every 1 or 2 years, with $100 rent increase each year. According to the Landlord: “The [Tenant] agreed on the new rents and amended terms in each lease extension before each signing.”

Additionally: “For each renewal, we followed similar patterns $100 rent increase every year with email communication 4 to 6 months in advance mutually agreed on the new rent and terms before any renewal signing.” The Landlord included copies of this email communication in their evidence.

In the Landlord’s account, the Tenant notified the Landlord on December 7, 2022 that they would be moving out at the end of January 2023. The Landlord agreed to the final month of January 2023 as rent-free.

Analysis

The *Act* s. 5 provides that the *Act* cannot be avoided:

> (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
>
> (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Part 3 of the *Act* sets out the timing and notice requirement for rent increases. First, s. 41 provides that “A landlord must not increase rent except in accordance with this Part.” Following this, s. 42 provides more specifics:

(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.

To provide for the amount, s. 43 sets out:

1) A landlord may impose a rent increase only up to the amount

a) calculated in accordance with the regulations
. . . or
c) agreed to by the tenant in writing.

In this situation, I note the Tenant did agree to the rent increase in writing. This is an "agreed rent increase".

The *Act* is clear that, even in the instance of an agreed rent increase, a notice must be in the approved form. The Tenant referred to this as the "RTB-7" form in their Application. I find the Tenant can dispute an agreed rent increase in this instance, where it was not imposed in compliance with the requirement for a proper Notice of Rent Increase set out in s. 42(3).

From this, I find the Landlord increased rent not in accordance with Part 3 of the *Act*, which cannot be avoided. The important condition that was not in place was that the Landlord did not issue the approved form, as explicitly required by s. 42(3). That form should have accompanied the written agreement signed by the Tenant and given back to the Tenant.

On the Application, the Tenant provided the amount of $4,000.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation, or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find the Tenant did not establish the value of the loss to them in terms of a monetary amount. There were apparently seven successive rent increases; however, I find the Tenant's indication of $4,000 is not specific with respect to the amounts of increase, as a monetary loss to them. The Tenant did not accurately present what the excess rent they paid over the years was in terms of a specific amount, and what the amount of $4,000 represents.

Additionally, I don't understand why the Tenant chooses to bring this forward to dispute resolution at this time after the tenancy ended. There was no record that they raised objections to the amount of rent during the tenancy. I find this is not in line with the principle, as set forth in s. 7(2) of the *Act*, that a party who claims compensation must do whatever is reasonable to minimize the loss to them.

Both for the lack of specifics on the value of loss to them, as well as the principle of mitigation, I dismiss the Tenant's claim for compensation for past rent increases. The Tenant was not successful in this Application; therefore, I grant no reimbursement of the Application filing fee to them.

Conclusion

For the reasons set out above, I dismiss the tenants' Application in its entirety, without leave to reapply.

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

Dated: May 25, 2023

Residential Tenancy Branch