



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALL STAR DEVELOPMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the application.

Both tenants and 2 agents of the landlord company attended the hearing. One of the tenants and one of the agents of the landlord each gave affirmed testimony, and all parties were given the opportunity to question each other and to give submissions. I advised that independent testimony was necessary and that one of the agents of the landlord disconnected from the call while the other agent of the landlord testified, but did not return.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

At the commencement of the hearing the landlord's agents submitted that the 2 year statutory limit had expired, however I found that since the tenants resided in the rental unit continually until December 15, 2020 and the tenants' application was made on November 23, 2022, the limit had not expired.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for overpayment of rent and unlawful rent increases?

Background and Evidence

The tenant testified that there have been 3 tenancy agreements during the course of this tenancy, and copies of each have been provided as evidence for this hearing. The landlord wanted the first lease to be short term as a technicality to protect the landlord's company due to a previous problem tenant, and indicated that a new tenancy agreement would be signed each year. After a year the tenants would have to move out so the landlord could turn the house into a half-way house.

The first tenancy agreement was for a fixed period from July 1, 2016 until June 30, 2017 and the tenants would then have to vacate. Rent in the amount of \$1,580.00 was payable on the 1st day of each month, and the tenants paid a security deposit on July 1, 2016 in the amount of \$790.00. It also contains 28 terms in an Addendum.

The second tenancy agreement shows a fixed term from July 1, 2017 to June 30, 2019 and then the tenants would have to vacate. It shows rent as "see attached" and the Addendum says rent for July 2017 to 2018 is \$1,680.00 and July 2018 to 2019 is \$1,765.00. It also shows a security deposit of \$840.00 by July 1, 2017, and the tenant testified that the additional \$50.00 was paid by the tenants.

The third tenancy agreement states that the tenancy commences on July 1, 2019 to June 30, 2020 and then the tenants must move out, and rent of \$1,850.00 and security deposit of \$925.00 by July 1, 2019. The tenant testified that another \$85.00 was paid to cover the additional security deposit.

The tenant believes the first tenancy agreement was a tactic to have the tenants move out. At some point it should have turned to a month-to-month instead of increasing rent each time; the tenants could have agreed to pay more rent instead of signing new tenancy agreements.

The tenants were served with a Notice of Rent Increase, a copy of which has been provided for this hearing. It is dated July 25, 2020 and increases the rent by another \$48.00 bringing the rent to \$1,898.00 effective November 1, 2020. Landlords were not allowed to raise the rent due to COVID and the landlord said it was issued just in case the Province lifted the COVID order. As a result there was no rent increase in November, but after the tenants gave notice to end the tenancy, the landlords charged that \$48.00 and the tenant's husband put a stop payment on it.

The parties ultimately signed a Mutual Agreement to End Tenancy effective December 15, 2020 and the tenants paid rent for half of the month. The landlord didn't

immediately agree to that, but while moving out, the landlord had more people moving in, trying to double-dip. All of the security deposits paid by the tenants has been returned by the landlord.

The tenants have provided a Monetary Order Worksheet setting out the following claims, totaling \$8,145.00:

- \$3,420.00 for over charge of rent July 1, 2017 to June 30, 2019;
- \$4,725.00 for over charge of rent July 1, 2019 to June 30, 2020.

The landlord's agent testified that the landlord was not deceitful or unfair. It's been 2 years after the tenants moved and the landlord's agents thought that the statute of limitations applies to each lease individually, or when increases were applied.

The landlord entered into the original lease in July, 2016 and it was signed as a 1 year fixed term to end June 30, 2017. In May, 2017 the landlord's agent asked to meet with the tenants at the residence and told them the landlord was going in a different direction and would not renew the lease, but would be applying with the City to develop the house as a group care facility just like the one next door. The tenants wanted their child to finish elementary school for the next 3 years, and the landlord's agent said that he'd talk to his dad. That was before legislation requiring a fixed term to revert to a month-to-month tenancy. All pages of the tenancy agreement were initialed by the tenants.

The landlord's agent said that the landlord would agree to a 2 year lease with fixed amounts of rent. The new tenancy agreement had the same Addendum as the first lease, and the rental amount in paragraph 1 was the only change. The difference was \$1,680.00 and \$1,765.00 for rent. The tenants agreed to the lease, and as per that, paid those amounts without issue throughout the tenancy.

The landlord got the development permit from the City in 2018, and on August 13, 2019 the permit was ready. Once the 2nd lease was over, the landlord would start development of the group home, but the tenants wanted to stay 1 more year for their child to go to school and said they would pay more rent. Therefore another tenancy agreement was made fixed to the end of June, 2020, but the tenants stayed until December, 2020. Due to COVID, the landlord could not end the tenancy.

The landlord's agent refutes the tenant's testimony that the landlord attempted to double dip. The rental unit was re-rented starting December 15, 2020. The landlord was

waiting for the society next door, whose clients had a sharp decrease in clients and the society was having financial hardship. As a result of that and COVID, and if the tenants had moved out in 2017 or 2019 it would have been converted.

The tenancy agreements set out the rental amounts so there wasn't an increase. It was only in 2020 when the landlord gave a notice of rent increase, proactively, not knowing if the moratorium of rent increases would be lifted. The landlord did not over charge, and did not collect the extra \$48.00 from the Notice of Rent Increase.

SUBMISSIONS OF THE TENANTS:

The tenants signed the tenancy agreements not knowing that they were being overcharged rent and not knowing that fixed terms weren't right. The landlord put the fear in the tenants and did things that were deceitful.

SUBMISSIONS OF THE LANDLORD'S AGENT:

Amounts were agreed to. There was no bullying, and the landlord did what was signed. The landlord compromised, and it's not fair to say that the landlord put the fear in the tenants.

Analysis

Firstly, the *Residential Tenancy Act* does not permit a landlord to increase rent unless it is done in accordance with the law. The landlord's position is that the first tenancy ended on June 30, 2017, the expiry date of the fixed term, and when the new tenancy agreement took effect, the amount of rent did not have to remain the same because that first term had ended. I agree.

Effective December 11, 2017, a "vacate clause" requiring the tenant to move out on the date the agreement ends can only be used in a fixed term tenancy agreement if:

- The tenancy agreement is a sublease agreement; or
- The tenancy is a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation. The reason must be indicated and both parties must have their initials next to this term in the agreement in order for it to be enforceable.

The second tenancy agreement was signed by the parties on June 25, 2017, prior to the change in legislation with respect to a "vacate clause." However, it contains an

accelerated rental amount for the second year, which was \$85.00 per month, or 5%, which is more than the allowable percentage rate for that year of 4%, or \$67.20 per month. I find that to be unconscionable, even considering that when the tenancy agreement was signed the parties did not know what the allowable rent increase would be for 2018.

The tenants were not required to sign the third tenancy agreement, but did so in any event, for an increased amount of rent again.

I also refer to Residential Tenancy Policy Guideline 37B. Agreed Rent Increase, which states:

A tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase. Agreements must:

- be in writing,
- clearly set out the rent increase (for example, the percentage increase and the amount in dollars),
- clearly set out any conditions for agreeing to the rent increase,
- be signed by the tenant, and
- include the date that the agreement was signed by the tenant.

In the circumstances, I find that the tenants overpaid rent the sum of \$213.60 ($\$85.00 - \$67.20 = \$17.18 \times 12 \text{ months} = \$213.60.00$) for the third year of the tenancy, but have not established that any other increase was not agreed to in writing.

Since the tenants have been partially successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenants as against the landlord in the amount of \$313.60. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$313.60.

This order is final and binding and may be enforced.

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: May 06, 2023

Residential Tenancy Branch