



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OP, MNR, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of possession, a monetary Order for unpaid rent and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

This hearing was also scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested the notice to end tenancy be cancelled, to dispute an additional rent increase and that the landlord comply with the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence and to make submissions to me.

Preliminary Matter(s)

At the start of the hearing I established that both parties understood that there was one tenancy in existence. Tenant E.W. and N.W. signed one tenancy agreement document and their daughter, tenant D.W. signed a second agreement. The landlord testified that two documents were used as there was not space for each to sign on a single agreement. Tenant D.W. confirmed that she understood there was only one tenancy agreement, that each of the three tenants were co-tenants under a single tenancy agreement.

I have determined that the tenants were co-tenants as they rented the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement and also have equal rights under the tenancy agreement.

Where co-tenants have entered into a month-to-month tenancy, and one or more tenants move out, they may continue to be held responsible for any debt or damages related to the tenancy until the tenancy agreement has been legally ended. If the tenants who moved out give proper written notice to end the tenancy, the tenancy agreement will end on the effective date of that notice, and all three tenants must move out, even if the notice has not been signed by all tenants. If any of the tenants remain in

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the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement.

Tenants E.W. and N. W. did not give proper written notice to end their tenancy. Section 45 of the Act requires a tenant to end a month-to-month tenancy by giving the landlord written notice no later than one day prior to the day in the month that rent is due. Proper notice given in mid-July, when rent is due on the first day of the month, would have been effective at the end of August. Therefore, I find that the three signatories to the original tenancy agreement continue to be jointly responsible for meeting the terms of the tenancy agreement.

The landlord's application for dispute resolution names all three tenants. Only tenant D.W. has applied for dispute resolution.

The landlord stated that the tenants have made late application to cancel the notice to end tenancy. I determined that on August 4, 2009 the tenant did attend at the government office to obtain a filing fee waiver and that, as provided under section 66 of the Act, the tenant did make efforts to apply for dispute resolution prior to the effective date of the Notice and is, therefore, entitled to additional time to make application to dispute the Notice.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

Has the landlord issued an additional rent increase?

Has the landlord failed to comply with the Act?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy agreement requires the tenants to pay monthly rent of \$950.00 due on the first day of each month. The tenants did not pay a deposit. The parties agreed during the hearing that tenants E.W. and N. W. are not currently residing at the rental unit and that in mid-July they gave verbal notice they would be moving out. The landlord dispute details indicate that tenants E.W. and N. W. moved out of the rental unit without proper notice.

The landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of August 14, 2009, was personally served on August 4, 2009. Tenant D.W. acknowledged receipt of the Notice. The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received

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\$1,475.00 within five days of service. The Notice also indicated that the tenants are presumed to have accepted that the tenancy is ending and that the tenants must move out of the rental unit by the date set out in the Notice unless the tenants file an Application for Dispute Resolution within five days.

The tenant testified that when she attempted to make her cash August rent payment the landlord told her that rent would now be \$1,200.00 per month and that the \$950.00 payment was refused. The landlord testified that she did not attempt to increase the rent but that she did want the tenant to sign a new tenancy agreement now that the tenant's parent had apparently moved out. The tenant stated that she has not paid September rent.

The tenant testified that the landlord has refused to make repairs to the rental unit. During the hearing the parties agreed that a move-in condition inspection was not completed. Tenant E.W. testified that they did not pay the deposit as they felt required repairs had not completed by the landlord. The parties agreed that the landlord had changed the lock on the front door and made some repairs to the bathroom plumbing. The tenants stated that there continues to be a leak in the bathroom, that there is mold on the bedroom windows, that the front and back doors require reinforcing, that the bathroom floor tiles are lifting and that the window sills are damaged. Tenant E.W. testified that she had talked with the landlord about the problems and asked that she come to investigate the issues.

The landlord testified that prior to the tenants moving in \$7,000.00 was spent on renovations. The landlord stated that the tenants replaced the showerhead that the landlord installed and that this caused additional leaking. The landlord did not acknowledge that any additional repairs were required or that she had been asked to investigate the need for further repairs.

During the hearing there was considerable animosity between the parties and matters raised that I found were not relevant to the applications before me. The landlord did acknowledge that some time between August 1 and 4, 2009 she entered the rental unit without providing proper 24 hour written notice and removed some of the tenant's belongings. The landlord stated that on three occasions between August 1 and 4, 2009 she attended at the rental unit in an attempt to obtain rent owed and that on one occasion a tenant did answer the door. The landlord could not provide specific dates and times she attended at the rental unit. The landlord testified that she thought the unit had been abandoned. The landlord apologized for this error and confirmed the belongings were returned to the car port.

The tenant's application for dispute resolution also alleges that the landlord has made false accusations against her and used "strong arm tactics" through verbal and physical means, against her.

Analysis

I find that the Notice to End Tenancy for Unpaid rent issued on August 4, 2009 is of no force or effect.

Section 47 of the Act explains how a landlord may issue a One Month Notice to End Tenancy for Cause when a security deposit has not been paid:

- 47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement

The landlord has issued a 10 Day Notice to End Tenancy for both unpaid rent and the unpaid deposit. The Notice issued did not include amounts owed for rent and utilities only, but also included an amount for an unpaid deposit that must be dealt with by way of a One Month Notice to End Tenancy for Cause. I have determined that there is adequate concern raised in relation to the rent owed and the rent requested by the landlord on August 1, 2009 and, on the balance of probabilities, that there was a dispute over the amount of rent owed by the tenant on August 1, 2009.

I find that the tenants owe \$950.00 per month by the first day of each month, that the tenants have not paid rent in the amount of \$1,900.00 for August and September, 2009 and that the landlord is entitled to compensation in that amount. The landlord's application for dispute resolution names all three tenants.

In relation to the tenant's application that the landlord comply with the Act, the landlord has indicated that she understands entry to a rental unit requires 24 hours written notice. Section 29 of the Act does provide for entry to a rental unit if a landlord believes the unit is abandoned, however, I do not accept that the landlord had adequately established that the tenants had in fact left the rental unit. I base this upon the landlord's own testimony that she did have contact with one tenant, at the rental unit, some time between August 1 and 4, 2009. The landlord must observe the requirements of section 29 of the Act prior to entering the rental unit and must have clearly established reasons to enter the rental unit if she believes it has been abandoned.

In relation to repairs the tenants have described, I have no evidence before me that the landlord has been given notice that repairs are required. The parties do agree that the landlord has made some repairs and I find that this indicates the landlord has responded to concerns expressed by the tenants. Section 32 of the Act requires a landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law. The tenants are responsible for maintaining reasonable health, cleanliness and sanitary standards in the rental unit.

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If this tenancy continues I find that the tenants must provide the landlord with a written request for repairs that would be required under the Act. The landlord must be given a reasonable period of time in which to respond to the request and must properly investigate the need for repair and make the necessary repairs. If the landlord fails to respond within a reasonable period of time and fails to provide repairs that would be considered related to health, safety and housing standards the tenants are at liberty to make further application for dispute resolution.

I find that leaking pipes, lifting floor tiles and insecure exterior doors fall under the category of repairs that are necessary in order to maintain reasonable health, safety and housing standards.

The tenant's allegation that the landlord has disrupted her quiet enjoyment through some form of harassment is not proven and I find that the tenant has failed to provide adequate evidence of any such behaviour by the landlord. Section 28 of the act provides:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

If evidence were to support a loss of quiet enjoyment a tenant may have grounds for a claim against the landlord.

The landlord is at liberty to issue another 10 Notice to End Tenancy for Unpaid Rent or a one Month Notice to End Tenancy for Cause in relation to the failure to pay the deposit.

During the hearing the tenants were warned that rent is due on the first day of each month

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent issued on August 4, 2009 is cancelled and of no force or effect.



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I find that the landlord has established a monetary claim, in the amount of \$1,950.00, which is comprised of unpaid August, and September 2009 rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution and I grant the landlord a monetary Order in that amount. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenants have been given instructions as to the process required when requesting repairs.

I have determined that the monthly rent is currently \$950.00.

I have included with this decision a copy of the Guide for Landlords and Tenants in British Columbia.

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: September 02, 2009.

Dispute Resolution Officer