



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPE / OPR / OPQ, CNR, DRI, MNDC, FF

Introduction

This hearing dealt with two applications: 1) from the landlord(s) for an order of possession, a monetary order for unpaid rent, and recovery of the filing fee, and 2) from the tenant to dispute an additional rent increase, for cancellation of the notice to end tenancy for unpaid rent, for a monetary order for compensation for damage or loss under the Act, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either of the parties is entitled to any of the above

Background and Evidence

The tenancy commenced in combination with the start of the tenant's employment on or about July 7, 2008. The rental unit was provided as a condition of employment and was made available to the tenant only for so long as she remained an employee.

Subsidized rent in the amount of \$300.00 was paid by way of automatic payroll deductions on a bi-weekly basis. Following the end of the tenant's employment, the tenant declined to vacate the unit. The landlord(s) then calculated rent on a per diem basis, but at the same per diem rate which had been built into the previous bi-weekly deductions. The tenant claimed she was unable to pay the rent following the end of her employment.

Documentary evidence submitted by the landlord(s) includes calculations in support of the landlord(s)' position that rent is overdue in the amount of \$1,264.37 for the period

from July 7 to September 3, 2009. The tenant expressed concerns about what she perceived was a change in the manner in which rent was calculated following the end of her employment, and considered that rent had been increased.

Included in the tenant's very detailed documentary evidence submitted prior to the hearing, and included in her testimony during the hearing, was information associated with her allegation that the landlord(s) had in various ways breached her right to quiet enjoyment. The details of these allegations will not be reproduced here. Pursuant to her allegations of "harassment, intimidating behaviour and defamation" on the part of the landlord(s), the tenant seeks a compensatory monetary order. Testimony from the landlord(s) during the hearing included responses to certain allegations made by the tenant.

While the parties undertook to achieve a resolution of the dispute during the hearing, these efforts did not in fact lead to settlement of the dispute.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with two separate 10 day notices to end tenancy for unpaid rent dated July 17, 2009, and July 30, 2009. Further, I find that the tenant was served with a 1 month notice to end tenancy for end of employment dated July 30, 2009. The tenant does not dispute that no rent has been paid subsequent to issuance of the two 10 day notices, as above. Neither does the tenant dispute that her rental unit was provided as a condition of her employment, and that her employment ended effective at the end of her shift on June 30, 2009. In the result, I find that the landlord(s) is entitled to an order of possession. Accordingly, I dismiss the tenant's application to cancel a notice to end tenancy.

While recognizing that the landlord(s)' manner of collecting rent necessarily changed following the end of the tenant's employment (bi-weekly payroll deductions were no longer possible), I find that the tenant has provided insufficient evidence to show that

the landlord(s)' calculation of rental arrears is in error, or that there was an increase in her rent after her employment ended. I therefore dismiss the tenant's application to dispute a rent increase.

Following from the above, as for the monetary order I find that the landlord(s) has established a claim of \$1,314.37. This is comprised of \$1,264.37 in unpaid rent, in addition to the \$50.00 filing fee. I therefore grant the landlord(s) a monetary order under section 67 of the Act for \$1,314.37.

Division 4 of the Act addresses **During a Tenancy**, and section 28 of the Act speaks specifically to **Protection of tenant's right to quiet enjoyment**. Further, Residential Tenancy Policy Guideline # 6 addresses **Right to Quiet Enjoyment**.

Guideline # 6 states in part, as follows:

This guideline deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment "promis(es) that the tenant...shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy."

- **Harrassment**

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome" As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions, however all reflect the element of ongoing or repeated activity by the harasser.

- Claim for damages

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

On application, an arbitrator may award aggravated damages where a very serious situation has been allowed to continue. Aggravated damages are those damages which are intended to provide compensation to the applicant, rather than punish the erring party, and can take into effect intangibles such as distress and humiliation that may have been caused by the respondent's behaviour.

The full text of the legislation, the Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

In the circumstances of this dispute, the relationship and interactions between the parties are complicated by the fact that the tenant's landlord was also her employer. There is no doubt that both parties experienced a certain discomfort in their relationship, especially when the tenant declined to vacate the rental unit after her employment had ended.

However, the above observations notwithstanding, after carefully considering all of the considerable documentary evidence and testimony of the parties, on a balance of probabilities I find there is insufficient evidence for me to conclude that there was a breach to the tenant's right to quiet enjoyment. Pursuant to all of the above, I therefore dismiss the tenant's application for a monetary order for compensation for damage or loss under the Act (breach of the right to quiet enjoyment).

As the tenant has not succeeded in her application, I also dismiss the tenant's application to recovery the filing fee.

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord(s) effective not later than **two (2) days** after service upon the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord(s) in the amount of **\$1,314.37**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: September 8, 2009

Dispute Resolution Officer