



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI, CNR, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy and a declaration that a rent increase was illegal and a cross-application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties were represented at the conference call hearing.

In this decision the term “tenant” is used in its singular form to refer to the tenant M.S. who appeared and testified at the hearing in its plural form to refer to both the tenant M.S. and the tenant S.S. who did not appear at the hearing.

Issues(s) to be Decided

Does the landlord have grounds to end this tenancy?

Is the landlord entitled to a monetary order as claimed?

What is the monthly rent for the rental unit?

Background and Evidence

The following facts are not in dispute. The landlord/tenant relationship began in 2007 when the tenant was renting unit #2 in the same building in which the rental unit is situated. The tenants paid a \$400.00 security deposit at the outset of that tenancy. On or about October 31, 2009 the landlord was prepared to issue the tenants a 2-month notice to end tenancy for landlord’s use of property and the parties came to an

agreement whereby rather than ending the relationship completely, the tenants would transfer to another unit, the rental unit at issue. The tenants moved into the rental unit on that same day and the parties further agreed that the tenants would not have to pay rent for the month of November in compensation for them having to move. The parties further agreed that the tenants paid no rent in the month of December and that on December 29 the landlords served the tenants with a 10-day notice to end tenancy for unpaid rent (the "Notice") by leaving the Notice with M.S.'s 14 year old daughter.

The tenants made their application to dispute the Notice on January 5, 2010. When asked why she had not made her application within the 5 days prescribed by the legislation, the tenant explained that she went to the Residential Tenancy Branch on Monday, January 4 and because she could not communicate effectively in English, was told to return with an interpreter which she did the next day. The tenant testified that she did not dispute the notice to end tenancy during the previous week because the social agencies which provide translation and interpretation services were closed. The tenant acknowledged having received the Notice on December 30 when it was given to her by her daughter.

The tenant testified that her usual practice for paying rent was to write out a cheque which she left with her teenage children who would give it to the landlord's agent when he came by the rental unit to collect it. The tenant testified that in December she did not know whether she was supposed to pay \$800.00 per month, which was the amount she had paid when she resided in Unit #2, \$650.00 per month or \$600.00 per month which was the amount she understood the previous tenant in the rental unit to have paid. As a result, the tenant left the cheque blank. The tenant testified that the landlord's agent did not attend the rental unit to pick up the rent until December 12 at which time she had a discussion with the landlord's agent P.S. The tenant testified that some of her belongings were taken from another area of the residential property and that the total value of those items was \$1,000.00. The tenant first stated several times that P.S. told her they "would talk about the rent for December" but then stated that P.S. specifically told her that she did not have to pay rent for the month of December because of the

theft. The tenant testified that she did not pay rent in the month of January because the landlord's agent came to collect the rent on the day she was released from the hospital and she told him on that date that she didn't feel well enough to speak with him and advised that she understood that she did not have to pay rent until after this hearing had been conducted. The tenant testified that no one came to collect the rent in February.

P.S. appeared at the hearing and testified that he did not excuse the tenant from paying rent for the month of December and would not have done so because her belongings were taken from a common area of the building. P.S. confirmed that he spoke with the tenant in January at which time she advised that she would not be paying rent until after the hearing was held.

B.L. appeared at the hearing and testified that when the tenant moved from Unit #2 to the rental unit he specifically advised her that her rent would remain at \$800.00.

The tenants seek an order setting aside the Notice and a declaration that their rent is \$600.00 per month. The landlord seeks an order of possession and a monetary order for unpaid rent and loss of income for the months of December – January.

Analysis

First addressing the issue of what amount of rent is payable for the rental unit, I do not accept the tenant's argument that she should only be required to pay what the previous tenant of that unit was paying. It is clear on the facts that the tenants voluntarily transferred their tenancy from Unit #2 to the rental unit and were compensated for doing so by being relieved of their obligation to pay rent in the month of November. Even if P.S. did not specifically tell the tenants that they would continue paying \$800.00 per month for the rental unit, I find that the tenants should reasonably have known this. The tenants were not promised a lower rent and the tenants did not fill out the December cheque because they acknowledged that it was a possibility that they would be required to pay \$800.00 per month. This latter admission has persuaded me that the tenants hoped they would be able to negotiate a lower rent with the landlord, which they were unable to do. I find that the tenants were obligated to pay \$800.00 per month for the

rental unit and failed to do so in the months of December and January. I grant the landlord a monetary order for \$1,600.00 for unpaid rent and loss of income for those months. The tenant's claim for a declaration that the rent is \$600.00 per month is dismissed.

Turning to the Notice, I find that the tenants received the Notice on December 30. Section 46(4) of the Act provides that within 5 days of receiving such a notice, tenants must either pay the outstanding rent in full or make an application for dispute resolution to dispute the Notice. In this case, the 5th day fell on a weekend, so the deadline was extended to the next business day of the Residential Tenancy Branch which was Monday, January 4. The tenant did not apply for more time to dispute the Notice and on that basis I must dismiss her claim to set aside the Notice as it was not filed within the statutorily prescribed timeframe. However, even if she had applied for more time, I would not have granted more time as s. 66 of the Act requires that the tenant prove that exceptional circumstances prevented her from complying with the prescribed timeframe. I do not find the circumstances of the tenant to be exceptional. Rather, she was well aware of her limitations in English but was sufficiently aware of the deadline by which she had to apply for dispute resolution and the need to make that application so she attended at the Branch on the last day she could have filed her application. The tenant had the obligation to ensure that she was prepared to make the application no later than January 4 and was obliged to secure the services of an interpreter. For these reasons the tenants' claim for an order setting aside the Notice is dismissed.

Conclusion

I grant the landlord an order of possession. The tenants must be served with the order of possession. Should the tenants 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.

As for the monetary order, I find that the landlord has established a claim for \$1,650.00 which represents unpaid rent and loss of income for the months of December and January and recovery of the \$50.00 filing fee. I order that the landlord retain the

\$400.00 security deposit and the \$9.06 in interest which has accrued to the date of this judgment in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,240.94. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: February 10, 2010
