



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI, CNC, CNR, OLC, RP, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application disputing an additional rent increase; for an order cancelling a notice to end tenancy for cause; for an order cancelling a notice to end tenancy for unpaid rent or utilities; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; and to recover the filing fee from the landlord for the cost of this application.

The parties both appeared, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All information and testimony provided has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the tenant's application disputing an additional rent increase justified?

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?

Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that the landlord make repairs to the unit, site or property?

Background and Evidence

This tenancy began on January 1, 2006. A new fixed-term tenancy agreement was prepared and signed by the parties in June, 2010 which contains an expiry date of May 31, 2012. Rent in the amount of \$925.00 is payable in advance on the 1st day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$450.00.

The tenant testified that the parties signed an agreement that stated the tenant would be the assistant property manager, and the tenant feels she should have some break in the rent. She testified that rent was \$900.00 per month, and the agreement states that there will be no rental increase for 2008/09 or 2009/10 in exchange for her services as assistant property manager. She further stated that the landlord increased the rent in June, 2010 by preparing a new tenancy agreement.

The landlord testified that he personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 18, 2010. The landlord also served the tenant with a 1 Month Notice to End Tenancy for Cause on the same date. The tenant was in arrears for rent, but caught up on all arrears on December 1, 2010, leaving a balance of \$145.15 for utilities which covered October to November, 2010. A copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was provided in advance of the hearing and states that the tenant failed to pay rent in the amount of \$925.00 that was due on September 1, 2010 and that the tenant failed to pay utilities in the amount of \$214.72 following written demand on November 1, 2010. The notice is dated November 18, 2010 and has an expected date of vacancy of November 29, 2010.

A copy of the 1 Month Notice to End Tenancy for Cause was also provided in advance of the hearing. It states that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, and put the landlord's property at significant risk. The notice is dated November 18, 2010 and contains an expected date of vacancy of December 19, 2010.

The landlord further testified that the tenant has called 911 on numerous occasions when there wasn't an emergency. He stated that the tenant also called him on numerous occasions complaining about other tenants and making assumptions about their personal lives, including accusations of assaults, domestic violence, drugs and alcohol. He further provided a copy of an email dated November 18, 2010 from the tenant to the landlord stating that she would continue to pay the rent and she would organize something for the arrears if he provided proof to her that he had given a warning letter to other tenants. He stated that the tenant has constant battles with tenants in the unit above her suite, no matter who those tenants are. He stated that she made complaints about tenants and accused them of illegal activity because she didn't get along with them, in an effort to have the landlord evict those tenants. Further, if she doesn't get her way, she calls the RCMP. The last call was made 2 months ago and the police told her not to call anymore.

He further testified that the tenant put a wooden wedge in the door of the shared laundry area preventing other tenants from gaining access.

The landlord has had a constant struggle dealing with tenants who don't get along and this tenant is the common denominator.

When asked why the landlord did not apply for an Order of Possession, he responded that he would wait to apply after this hearing has concluded.

Analysis

Firstly, dealing with the tenant's application disputing an additional rent increase, I have reviewed the Addendum to the Tenancy Agreement dated June 10, 2008. I accept the evidence of the tenant that rent was \$900.00 at that time. The landlord is required to issue a notice to the tenant in order to increase the rent, and I find that preparing a new tenancy agreement does not suffice according to the *Residential Tenancy Act*. The tenancy agreement dated June 27, 2010 states that the tenant will pay rent in the amount of \$925.00, and I have no evidence before me that the tenant was served with a

Notice of Rent Increase in the approved form or that the notice was issued at least 3 months before the effective date of the increase. For that reason, the tenant's application disputing the additional rent increase is allowed. I find that rent in the amount of \$900.00 per month is payable in advance on the 1st day of each month.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is therefore flawed, in that it contains an incorrect amount of rent payable by the tenant. Therefore, the notice must be cancelled.

I accept the evidence of the landlord that the tenant has unreasonably disturbed other occupants or the landlord. I further accept the evidence of the landlord that this tenant is the common denominator in the altercations that have taken place, and the numerous calls to the police and 911. I also find that slamming doors is not an issue to call 911 for.

The *Residential Tenancy Act* states that a landlord may issue a notice to end the tenancy effective on a date that is not earlier than 1 month after the date the tenant receives the notice, and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. The *Act* further states that if a landlord give notice to end a tenancy effective on a date that does not comply with the *Act*, the notice is deemed to be changed to the earliest date that does comply. I find that rent is payable on the 1st day of the month, the notice was issued on November 18, 2010 and therefore the effective date of vacancy on the notice cannot be earlier than December 31, 2010.

Conclusion

For the reasons set out above, the tenant's application disputing an additional rent increase is hereby allowed. I order that the landlord reimburse the tenant for the overpayments for the months of July, August, September, October, November and December, 2010 in the amount of \$25.00 per month.

The tenant's application for an order cancelling the 1 Month Notice to End Tenancy for Cause is hereby dismissed without leave to reapply. The effective vacancy date of that notice is hereby changed to December 31, 2010.

The tenant's application for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is hereby allowed, and that notice is hereby cancelled.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

The tenant's application for an order that the landlord make repairs to the unit, site or property is hereby dismissed without leave to reapply.

Since the tenant has been partially successful with the application before me, I also order that the tenant recover the \$50.00 filing fee from the landlord for the cost of this application, and I grant the tenant an order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$200.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

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: December 15, 2010.

Dispute Resolution Officer