



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, CNR, MNDC, RP, RR, FF

Introduction

This was the hearing of applications by the landlord and by the tenant. The hearing was conducted by conference call. The hearing commenced at 9:00 A.M. The landlord attended and was represented by her daughter who acted as translator. The tenant participated but she did not call into the hearing until 9:15 A.M.

Issues(s) to be Decided

Should the Notice to End Tenancy be cancelled; is the landlord entitled to an order for possession?

Is the landlord entitled to a monetary order and if so, in what amount?

Is the tenant entitled to a monetary order? A repair order? A rent reduction?

Background and Evidence

The rental unit is a suite in a house in Burnaby. The tenancy began in 2007. Monthly rent is \$1,300.00. A previous decision regarding this tenancy was made on September 2, 2010. The previous decision concerned the landlord's application for an order for possession and a monetary order pursuant to a 10 day Notice to End Tenancy for unpaid rent. The Dispute Resolution Officer determined that that the tenant overpaid her security deposit. She applied \$650.00 of the \$1,300.00 deposit towards rental arrears and granted the landlord a monetary order in the amount of \$106.94. The Dispute Resolution Officer dismissed the landlord's request for an order for possession

because she found that the landlord had accepted rent without any qualifications after serving the tenant with a 10 day Notice to End Tenancy for unpaid rent and she had thereby reinstated the tenancy.

The landlord served the tenant with another 10 day Notice to End Tenancy for unpaid rent on November 13, 2010. This notice, dated November 13, 2010 claimed that the tenant failed to pay rent in the amount of \$742.00 that was due on September 2, 2010. The Notice also claimed that the tenant failed to pay utilities of \$50.74 that were due on September 21, 2010 and the landlord included in her application a claim for \$20.00 for interest on rent from April said to have been paid in September and interest on a pet deposit.. The utilities claimed were \$25.00 for cable and \$25.74 for gas. The tenant applied to cancel the Notice to End Tenancy and to claim other relief on December 8, 2010.

The landlord claimed payment of the sum of \$781.80 said to be for unpaid utilities and rent. \$650.00 of the claimed amount was for a pet deposit to replace the deposit reduction ordered by the Dispute Resolution Officer in her September 2, 2010 decision. The landlord maintained that she was entitled to the amount because the tenant has pets.

The landlord also submitted as part of her evidence a copy of a new tenancy agreement between herself and the tenant. I was told that the new agreement was prepared after the tenant's husband moved out of the rental unit. The new agreement commenced October 1, 2010. It provided for a monthly rent of \$1,300.00 and referred to a security deposit of \$650.00. The new agreement made no provision for a pet deposit.

The tenant provided a lengthy written submission. She described the hardships she suffered throughout the tenancy. The tenant testified that after the tenancy began the landlord told her that she was responsible for paying the utilities, including gas and electricity and it would be up to her to collect from the other tenants for their share of the utilities. Apparently the tenant deducts some amount from her rent on account of the

payments due from other tenants. The actual arrangement was not clearly explained and there is apparently no written document that sets out the obligations of the parties or the proportion of utilities for which each tenant is responsible. In her written submission the tenant said that she is obliged to pay 50% of the utilities and she considers this to be inequitable and unfair.

The tenant claimed payment of the sum of \$2,890.00 for loss of quiet enjoyment and other matters dating back to 2007. She said in her submission that she: “resolved to deal formally with the situation through the Residential Tenancy Branch at a date closer to the end of our tenancy, whenever that should be.” She that said that now locked in a dispute with the landlord regarding return of the pet deposit: “that date has now arrived.”

Analysis and conclusion

The tenant received the landlord’s 10 day Notice to End Tenancy for unpaid rent on November 13, 2010. She had five days to dispute the Notice, but she did not submit her application for dispute resolution until December 8, 2010 after the landlord filed her application seeking a monetary order and an order for possession. The tenant did not provide any convincing reason for her failure to dispute the Notice within the required time and there is no basis to grant her an extension of time to dispute the Notice to End Tenancy. Ordinarily, having failed to dispute the Notice to End Tenancy within the required time the tenant would be conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

In this case I find that the tenant’s failure to dispute the Notice is not a concern because I have determined that the Notice itself is defective and void; the Notice was given for what the landlord claimed was unpaid rent, when in fact there was no unpaid rent. The amounts the landlord claimed were due included a \$650.00 pet deposit, amounts said to be due for utilities and a claim for interest.

In the October 1, 2010 tenancy agreement drafted by the landlord there is no mention of a pet deposit and no requirement to pay a pet deposit. Section 20 (c) of the *Residential Tenancy Act* provides that a landlord may not require a pet deposit at any time other than when the landlord and tenant enter into the tenancy agreement or if the tenant acquires a pet during the tenancy. It is not open to the landlord to claim that the amount of the claimed deposit constitutes unpaid rent and on the evidence the landlord has not made the payment of a pet deposit a condition of the tenancy agreement dated October 1, 2010. The evidence was that the utilities are in the tenant's name and contrary to Residential Tenancy policy guidelines, the landlord appears to have made the tenant responsible for paying utilities and collecting another tenant's share; the landlord should have the utilities in her name and should be charging each tenant the appropriate pro-rata share after presenting the utility bills to them. There is no basis for the landlord's claim for interest; I was not directed to any contractual provision entitling the landlord to claim interest on a late rent payment.

I find that the 10 day Notice to End Tenancy for unpaid rent dated November 13, 2010 is void and of no effect. The tenancy will continue. The landlord's application for an order for possession and a monetary order is dismissed without leave to reapply.

The tenant included in her claim to cancel the Notice to End Tenancy a claim for substantial compensation relating to events that date back several years to the early days of the tenancy. The landlord did not receive the tenant's summary of her grievances until sometime after December 8, 2010 when the tenant served her application for dispute resolution. I find that the landlord has not had a proper opportunity to respond to the tenant's claims and I find that the tenant's claims for loss of quiet enjoyment, for repair orders and a rent reduction are unrelated to the central issue dealt with at this hearing, namely: whether the tenancy should end pursuant to the Notice given by the landlord.

Section 2.3 of the Rules of Procedure provides as follows:

2.3 Dismissing unrelated disputes in a single application

If, in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.

Pursuant to the quoted provision I dismiss with leave to reapply the tenant's claims for a monetary order, for a repair order and a for rent reduction based on my determination that these are unrelated disputes that should be resolved at separate hearing upon a new application by the tenant.

Dated: December 22, 2010.
