



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

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 for Unpaid Rent and Utilities, a monetary Order for unpaid rent and utilities, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted a package of evidence to the Residential Tenancy Branch. The female Landlord stated that none of these documents were served to the Tenant for the purposes of relying upon them as evidence at this hearing. As the evidence was not served on the Tenant for the purposes of being considered as evidence at this hearing, none of the documents submitted to the Residential Tenancy Branch are being considered when determining these matters. Both parties will be provided with the opportunity to testify to the contents of documents that are relevant to this matter.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent and utilities; to a monetary Order for unpaid rent and unpaid utilities; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into the rental unit sometime during the latter portion of April of 2010; that the parties entered into a fixed term tenancy agreement that was scheduled to begin on May 01, 2010 and to end on April 30, 2011; that the written tenancy agreement required the Tenant to pay monthly rent of

\$1,250.00 on the first day of each month; and that the Tenant paid a security deposit of \$900.00. The parties agree that the written tenancy agreement entitled the Tenant to occupy the main portion of the residential complex and to access a self-contained vacant suite in the complex solely for the purposes of using the laundry facilities.

The Landlord and the Tenant agree that they entered into a new verbal tenancy agreement for October 01, 2010, at which time the Tenant agreed to pay monthly rent of \$1,750.00 on the first day of each month, with the understanding that she would continue to occupy the living space she had been occupying and friends of hers would be occupying the self-contained suite in the residential complex.

The Landlord contends that they had a verbal agreement that the Tenant's friends would only reside in the self-contained suite during October and November of 2010. The Tenant contends that she understood that her friends could remain in the self-contained unit until the Tenant ended the tenancy.

The Landlord contends that once she learned that the Tenant's friends did not intend to vacate the rental unit, the Landlord and the Tenant verbally agreed to enter into a new tenancy agreement for January 01, 2010, at which time the Tenant agreed to pay monthly rent of \$2,150.00 on the first day of each month, with the understanding that she would continue to occupy the living space she had been occupying and her friends would continue to occupy the self-contained suite in the residential complex.

The Tenant contends that she did not agree to the new monthly rent payment; that the Landlord simply informed her that she must pay this amount; and that she paid the new monthly rent because she believed she had no option.

The Landlord and the Tenant agree that the female Landlord personally served the Tenant with a Ten Day Notice to End Tenancy on February 06, 2011. The parties agree that the Notice declared that the Tenant had not paid rent of \$2,150.00 that was due on February 01, 2011 and that she must vacate the rental unit by February 23, 2011.

The Tenant stated that she is almost finished cleaning the rental unit and that she still has possession of the keys to the rental unit. She stated that the occupants of the self contained suite are still occupying that suite.

The female Landlord stated that the Tenant paid \$1,750.00 in rent for December of 2010. The Tenant stated that she cannot recall whether she paid \$1,750.00 or \$2,150.00 in rent for December of 2010.

The Landlord and the Tenant agree that the Tenant paid \$2,150.00 in rent for January of 2011 and that she paid no rent for February of 2011. The Landlord is seeking compensation for unpaid rent from February of 2011 and from March of 2011.

The Landlord stated that the original tenancy agreement required the Tenant to pay all the hydro and water charges incurred during her tenancy. The Tenant stated that she was not sure if she was required to pay all of the hydro and water charges.

The Landlord is claiming compensation, in the amount of \$823.88, for water charges incurred during this tenancy. The Tenant stated that she has never received a water utility bill for this residential complex. The female Landlord stated that she has never served the Tenant with copies of the water utility bills for the complex but she understands that they were being mailed directly to the Tenant by the City of Victoria. The Landlord acknowledged that the water bill she has in her possession is addressed to her at the rental unit and is not addressed to the Tenant.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant and the Landlord entered into a written tenancy agreement that required the Tenant to pay monthly rent of \$1,250.00 on the first day of each month. I find that this agreement entitled to occupy the main living space in the residential complex and to access the self-contained suite in the complex for the purposes of using the laundry facilities.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant and the Landlord entered into a new tenancy agreement, effective October 01, 2010, and that they entered into a new verbal tenancy agreement that required the Tenant to pay monthly rent of \$1,750.00 on the first day of each month. I find that this new agreement entitled the Tenant to occupy the main living space in the residential complex and the self-contained suite in the complex, and that she authorized other occupants to reside in the self-contained suite. I find that they entered into a new tenancy agreement because it authorized the Tenant to occupy additional space in the residential complex. As the parties entered into a new tenancy, I find that they were not limited by the rent restrictions imposed by section 43 of the *Act*.

I find that the Landlord has submitted insufficient evidence to show that the verbal tenancy agreement the parties entered into was a fixed term tenancy that ended on November 30, 2010. When two parties disagree on a term of a verbal agreement, the onus of proving that the term exists rests with the party who is attempting to enforce the term of the agreement. I find that the Landlord has submitted insufficient evidence to show that the parties verbally agreed that their verbal tenancy agreement for the entire residential complex ended on November 30, 2010. In reaching this conclusion I was heavily influenced by the absence of documentary evidence that corroborates the Landlord's claim that their verbal tenancy agreement ended on November 30, 2010 or that refutes the Tenant's claim that the verbal tenancy agreement remained in force until the tenancy was ended in accordance with the *Act*.

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount calculated in accordance with the *Act*. As the rent increase that was imposed on January 01, 2011 exceeded that allowable increase for 2011, I find that the rent increase of \$400.00 does not comply with the *Act*.

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is ordered by the director on an application of section 43(3) of the *Act*. As the rent increase that was imposed on January 01, 2011 was not ordered by the director, I find that the rent increase of \$400.00 does not comply with the *Act*.

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is agreed to by the tenant in writing. As the Tenant did not agree to the increase in writing, I find that the rent increase of \$400.00 does not comply with the *Act*.

As the female Landlord was certain that the Tenant paid \$1,750.00 in rent for December of 2010 and the Tenant was not certain how much she paid, I find that the Tenant paid \$1,750.00 in rent for December. On the basis of the undisputed evidence presented at the hearing, I find that the Tenant paid \$2,150 in rent for January of 2011 and no rent for February of 2011. As I have found that the Tenant was obligated to pay monthly rent of \$1,750.00, I find that she owes \$1,750.00 to the Landlord for rent from February of 2011.

Section 43(5) of the *Act* stipulates that if a landlord collects an unauthorized rent increase, the tenant may deduct the unauthorized rent increase from the rent. As the Landlord collected an unauthorized rent increase of \$400.00 in January of 2011, I find that the Tenant can deduct this amount from the rent owing for February. I therefore find that the Tenant currently owes \$1,350.00 for rent from February of 2011.

I find that the Landlord's claim for unpaid rent from March of 2011 was premature, as this hearing was held the day before rent was due from March. I therefore dismiss the Landlord's claim for unpaid rent from March of 2011, with leave to reapply if that rent is not paid when it is due.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. On the basis of the undisputed evidence presented at the hearing, I find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on February 23, 2011, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a Tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served upon the Tenant.

I find that the Landlord's claim for compensation for water charges is premature. I find that a Landlord cannot reasonably expect the Tenant to pay water charges before she is presented with a bill for those charges. As the Landlord has failed to establish that the Tenant has ever received a water bill, I find that her claim for payment of this bill(s) is premature. On this basis, I dismiss the Landlord's claim for unpaid utilities, with leave to reapply.

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

Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$1,450.00, which is comprised of \$1,350.00 in unpaid rent and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's \$900.00 security deposit, in partial satisfaction of the monetary claim. Based on these determinations I grant the Landlord a monetary Order for the balance of \$550.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: March 01, 2011.

Residential Tenancy Branch