



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNR, OLC, FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent, to set aside a Notice to End Tenancy because the Tenant does not qualify for subsidized housing, and to dispute an additional rent increase.

At the hearing the Tenant withdrew her application to set aside a Notice to End Tenancy because the Tenant does not qualify for subsidized housing because she has not been served with this type of Notice to End Tenancy.

At the hearing the Tenant withdrew her application to dispute an additional rent increase, as she did not realize that the withdrawal of her rent subsidy did not constitute a rent increase.

In the Tenant's Application for Dispute Resolution it is clear that she is seeking a monetary Order in the amount of \$5,954.00 to replace her furniture. Her Application for Dispute Resolution has therefore been amended to include an application for a monetary Order for money owed or compensation for damage or loss. This amendment was permitted after the Agent for the Landlord #1 indicated that the Landlord understood this issue was in dispute at these proceedings.

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 Tenant stated that she submitted evidence to the Residential Tenancy Branch and that she served this evidence to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence, which was not available to me at the time of the hearing or at the time this decision was rendered. The Tenant was provided with the opportunity to explain the nature of her documentary evidence, most of which I did not need to see prior to making a determination in this matter.

I determined that it was necessary to view the tenancy agreement, which had been submitted as evidence by the Tenant. The Landlord was able to fax a copy of that agreement to me and it was available to me at the hearing.

The Landlord submitted evidence to the Residential Tenancy Branch and that the Tenant acknowledged receiving copies of the Landlord's evidence. This evidence was considered when making a determination in this matter.

Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside and whether the Tenant is entitled to compensation for replacing her furniture.

Background and Evidence

The Landlord and the Tenant agree that the parties entered into a written tenancy agreement for a tenancy that began on October 31, 2008. The tenancy agreement requires the Tenant to "pay the monthly CMHC/BCHMC Low End Market Rent/Economic Rent of \$970.00", less a rental subsidy if eligible. The Agent for the Landlord stated that the economic rent of the rental unit has increased to \$1,006.00 since the tenancy agreement was signed in 2008.

The tenancy agreement requires the Tenant to "complete and sign a declaration stating information on the occupant(s) in the residential premises, and their gross incomes.... at least once every 12 month period". The agreement stipulates that "failure to disclose, or misrepresentation of, income or assets by a Tenant entitles the Landlord to remove any subsidy and/or end the Tenancy Agreement".

The Agent for the Landlord #1 stated that the Landlord received verification that the Tenant was receiving income assistance from the Provincial Government which she did not claim on her annual declaration. The Tenant stated that she did receive monthly rent assistance from the Provincial Government in 2010 and 2011, in the amount of \$660.00, that she did not disclose on her annual declaration. She stated that she did not understand that she was required to report this assistance as income.

The Landlord and the Tenant agree that her rent subsidy in 2010, which was calculated on the basis of her annual income declaration, was \$925.00. The parties agree that the Tenant was required to pay monthly rent of \$81.00 in 2010.

The Agent for the Landlord#1 stated that the Landlord recalculated her rent subsidy for 2010 based on the fact that the Tenant was receiving unreported rent assistance from the Provincial Government of \$660.00. The Agent for the Landlord stated that the Landlord recalculated the subsidized monthly rent for the period between April 01, 2010 and January 01, 2011 to be \$660.00. Based on the recalculated rent, the Agent for the

landlord #1 stated that the Tenant should have paid a total of \$7,920.00 in rent for this period.

The Landlord and the Tenant agree that the Tenant paid \$810.00 in rent for the period between April 01, 2010 and January 01, 2011. The Landlord contends that the Tenant owes rental arrears of \$7,110.00 for this period, based on the recalculated rent subsidy.

The Agent for the Landlord#1 stated that the Landlord removed the Tenant's entire rent subsidy on February 01, 2011, which required her to pay economic rent of \$1,006.00 per month. The Landlord informed the Tenant of this decision in a letter, dated January 28, 2011, which was submitted in evidence.

The Agent for the Landlord#1 stated that rent of \$570.00 was paid by the Provincial Government for this tenancy on February 01, 2011 and \$660.00 was paid by the Provincial Government on March 06, 2011. The Tenant stated that she did not pay any rent in addition to the amounts paid by the Government.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid rent was posted on the door of the rental unit on March 03, 2011. The Tenant acknowledged receiving the Notice to End Tenancy on March 04, 2011. The Landlord and the Tenant agree that the Notice to End Tenancy had a declared effective date of March 16, 2011.

The Landlord and the Tenant agree that in October of 2009 the Tenant advised the Landlord that she had bedbugs in her rental unit; that the rental unit was treated for bedbugs shortly after the Landlord was informed of the problem; that the treatment resolved the problem with bedbugs; and that the Landlord or the pest control company never advised the Tenant that she should discard her furniture as a result of the bedbugs.

The Tenant stated that she was very disturbed by the presence of bedbugs so she discarded most of her furniture, including her television. She is seeking compensation, in the amount of \$5,954.00 to replace her furniture.

The Agent for the Landlord #2 stated that there have been periodic problems with bedbugs at this residential complex and that the Landlord has always arranged for treatment whenever an incident has been reported.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant entered into a written tenancy agreement that required the Tenant to pay the monthly economic rent of \$970.00, less any rental subsidy for which she was eligible. The Landlord submitted no documentary evidence to show that the economic rent for this unit has increased to \$1,006.00.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant was paying subsidized rent of \$81.00 in 2010, and that the amount of her subsidy was based on her annual income declaration.

The tenancy agreement clearly established that the Landlord has the right to remove the rent subsidy if the Tenant failed to disclose or misrepresented her income when she submitted her annual income declaration. On the basis of the undisputed evidence presented at the hearing, I find that the Tenant failed to disclose that she was receiving monthly rental assistance during this period, in the amount of \$660.00.

As the Tenant provided the Landlord with false information regarding her monthly income, I find that the Landlord had the right to withdraw the Tenant's rent subsidy. I find that the Landlord did withdraw the Tenant's rent subsidy for February and March of 2011 and that they advised the Tenant of this decision in a letter dated January 28, 2011. As the Tenant's rent subsidy was withdrawn, I find that she was required her to the economic rent for the rental unit, which was at least \$970.00 per month. I have not determined whether the economic rent had increased to \$1,006.00 by 2011, as that matter is not relevant to my decision.

As the Tenant did not disclose \$660.00 in income she was receiving from the Provincial Government, I find that the Landlord had the right to reduce her subsidy in an amount that correlates to the undisclosed income. In the absence of evidence to the contrary, I accept that the Landlord had the right to increase her rent payable from \$81.00 to \$660.00 per month for the period between April 01, 2010 and January 31, 2011, once they determined that she was receiving undisclosed income of \$660.00 during that period. I have made no determination on how much rent, if any, the Tenant owes the Landlord for this period, as that matter is not relevant to my decision.

As the Tenant was required to pay rent of at least \$970.00 for February and \$970.00 for March of 2011, and \$1,230.00 was paid, I find that the Tenant owed at least \$710.00 in rent for February/ March.

Section 26(1) of the Act stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the Act to deduct all or a portion of the rent. In the circumstances before me, there is no evidence to indicate that the Tenant has the right to deduct any portion of the rent. I therefore find that the Tenant failed to pay rent of at least \$710.00 that was due for August of 2008.

Section 46(1) of the Act stipulates, in part, that a landlord may end a tenancy if the tenant fails to pay rent that is due by serving notice to end the tenancy on a date that is not earlier than ten days after the tenant receives the Notice. On the basis of the undisputed evidence presented at the hearing, I find that the Tenant received a Notice to End Tenancy on March 04, 2011, which declared that she must vacate the rental unit on March 16, 2011. As the Tenant did owe rent on March 01, 2011, she has not yet paid all of the rent that is due, and she has been served with a Notice to End Tenancy, I find that the Landlord has grounds to end this tenancy pursuant to section 46 of the Act. As

the Landlord had grounds to end this tenancy pursuant to section 46 of the *Act*, I dismiss the Tenant's application to set aside the Notice to End Tenancy.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss. In these circumstances the burden of proving that the bedbug infestation arose from the Landlord's failure to comply with the *Act* rests with the Tenant.

Section 32(1) of the *Act* requires Landlords to provide and maintain residential property in a state of decoration and repair that having regard to the age, character, and location of the rental unit, makes it suitable for occupation by a tenant. In my view, the Landlord acted reasonably and responsibly when the Landlord treated the rental unit for bedbugs within days of receiving a report of the problem. In reaching this conclusion, I was heavily influenced by the undisputed evidence that shows the treatment resolved the problem with bedbugs.

I find there is insufficient evidence to show that the Landlord was responsible for the bedbug infestation. I am aware that bedbugs are a common problem in British Columbia and that they can easily be introduced into a residential complex even when a landlord makes every effort to maintain the complex in good repair. In the absence of evidence to show that this Landlord did not respond to a report of bedbugs in a timely manner or that there was an infestation within the complex that the Landlord did not diligently address, I cannot find that the Landlord is responsible for any damages that flow from this infestation. On this basis, I dismiss the Tenant's claim for compensation for replacing the furniture that she elected to discard.

Conclusion

As the Tenants application to set aside the Notice to End Tenancy has been dismissed and the Agent for the Landlord #1 requested an Order of Possession at the hearing, I grant the Landlord an Order of Possession. As requested by the Agent for the Landlord #1, I find that the Order of Possession will be effective on April 30, 2011.

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 21, 2011.

Residential Tenancy Branch