



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, MNDC, RR

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to set aside the notice to end tenancy for unpaid rent. The tenant also applied for a monetary order for compensation for loss under the *Act* and for a rent reduction. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Does the landlord have reason to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue? Is the tenant entitled to compensation and to a rent reduction?

Background and Evidence

The tenancy started on November 01, 2010. The monthly rent is \$1,600.00 due in advance on the first day of the month. The rent did not include utilities. Prior to moving in, the tenant paid a security deposit of \$800.00.

The landlord stated that the tenant requested him to allow her to move in a week prior to the start of tenancy and the landlord agreed. He informed her that there were no appliances in the home and that they would be delivered on November 01, 2011. The landlord stated that the tenant moved in prior to November 01, knowing that there would be no appliances in the unit until November 01, 2010 and did not pay rent for this period. The tenant provided post dated cheques to the landlord at the start of tenancy.

The tenant's cheque for March was stopped and her cheque for April was returned for lack of funds. The landlord stated that at the end of March, the tenant gave him \$600.00 in cash and requested that a portion of the balance be covered by the security deposit of \$800.00. The tenant also requested that the balance of \$200.00 be waived as compensation for the first week of her tenancy when she did not have appliances. The tenant argued that she did not move in prior to November 01, 2010 and that the first week of her stay in November was without appliances.

The tenant wrote a receipt describing the above transaction and signed it. The landlord signed it as well. The tenant filed a copy of the receipt at the Residential Tenancy Branch, but did not serve the landlord with a copy. However, the tenant did fax a copy of this receipt to Vancouver Eviction Services – an agent who was hired to represent the landlord just prior to the hearing.

The receipt is dated “*March 2011*” and states that the \$200.00 deduction was for “*no appliances in Jan 11*”. Written over the tenant’s signature is “*\$200.00 reduction per month in rent until contract ends or lease*”. Written over the landlord’s signature is “*paid full \$1,400.00 rent in full for April 2011*”.

The tenant maintains that she has paid rent in full. The landlord agreed that she had paid \$1,400.00 by certified cheque for May which he received on May 13, 2011. The tenant also stated that the rent has been reduced by \$200.00 as per the receipt issued in March 2011. The landlord denied having reduced the rent by \$200.00.

The landlord stated that at the start of tenancy, he requested the tenant to put the utilities in her name, but she did not do so. The landlord stated that he dropped off copies of utility bills on January 13, 24 and February 15. The tenant called the police to complain of harassment by the landlord. The tenant stated that she did not pay utilities as she had not received bills. Due to delinquent payments, the gas supply was cut off.

The tenant also is claiming \$5,100.00 as compensation for harassment by the landlord, an assault by the landlord, a broken bedroom door lock, broken garage door, lack of gas supply and unsafe conditions around the house.

The tenant has filed photographs and a copy of a business card of an RCMP officer. The tenant has not filed any evidence of the alleged assault by way of a police report and the landlord denies having harassed or assaulted the tenant. He stated that his only contact with the tenant was to request rent and utilities.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received notices to end tenancy for unpaid rent, on April 28, 2011 and May 10, 2011. At the time of the hearing, in addition to the cost of utilities, the tenant owed the landlord \$1,600.00 for April and \$200.00 for May.

Having reviewed the rent receipt filed by the tenant, I find that the tenant's verbal testimony contradicted some information on the receipt.

The tenant stated that she was without appliances in the first week of November 2010, but the receipt states she was without appliances in January 2011. The parts of the tenant's testimony that are in question regarding the \$200.00 rent reduction per month and rent paid for April, appear to have been written after the landlord signed it as these comments are written over signatures on the receipt.

Therefore on a balance of probabilities it is more likely than not that the tenant did not pay \$1,400.00 in cash for April prior to April 01, 2011. In addition, the post dated cheque was returned for insufficient funds and it is unlikely that the landlord would attempt to cash the cheque on April 01, if he had already received rent for April at the end of March. It is also unlikely that the tenant would pay rent for April at the end of March. Even if I accept that the tenant had paid \$1,400.00 for April, she would still owe \$200.00.

The landlord testified that he did not lower the rent by \$200.00. The tenant stated that the initial \$200.00 off was for no appliances in November. However, the receipt states that the reduced rent was for no appliances in January 2011. Based on the sworn testimony of both parties, I find the landlord to be credible and I prefer his evidence. I also find that the tenant owes \$1,600.00 for rent for April and \$200.00 for May. Accordingly, the notice to end tenancy is upheld and therefore the tenant's application to cancel the notice is dismissed.

The tenant has also claimed \$5,100.00 as compensation for harassment, assault, a broken bedroom door lock (in February 2011), broken garage door, disconnected gas supply and a loss of quiet enjoyment. The tenant stated that she verbally informed the landlord, several times about repairs and he took no action. The landlord denied all allegations and stated that he was not informed of any problems other than the complaint about the appliances. The tenant did not file a police report to support her allegations of harassment and assault. The tenant filed photographs which do not support her claim for loss of quiet enjoyment. The photographs depict a messy yard, a portion of the garage door, some paint cans etc. The tenant did not pay utilities and therefore the gas supply was shut off. The tenant was unable to justify her claim for compensation in the amount of \$5,100.00 and therefore it is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession effective two days after service on the tenant. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession.

Should the tenant 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.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective two days after service on the tenant. The remainder of the tenant's application is dismissed without leave to reapply.

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: June 01, 2011.

Residential Tenancy Branch