



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF
DRI CNR ERP RP LAT FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, to keep the security deposit, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The Tenants filed seeking to dispute an additional rent increase, an Order to cancel a notice to end tenancy for unpaid rent, an Order to have the Landlord make emergency repairs and repairs, to authorize the Tenants to change the locks to the rental unit, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, confirmed service of the hearing documents, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenants made their application to dispute a Notice to End Tenancy for unpaid rent within the required time frames?
2. Has the Landlord issued a 10 Day Notice that meets the form and content requirements in accordance with the *Residential Tenancy Act*?
3. Has the Landlord met the burden of proof to obtain a Monetary Order for unpaid rent?
4. Has the Landlord issued a Notice of Rent increase that meets the requirements of the *Residential Tenancy Act*?

Background and Evidence

At the outset of the hearing the Landlord testified that he did not serve the Tenants with copies of his evidence.

I heard undisputed testimony that the parties entered into a written month to month tenancy agreement that began on June 1, 2009. As per the written tenancy agreement rent is payable on the first of each month in the amount of \$1,000.00 and the Tenants paid \$500.00 as the security deposit on June 1, 2009.

The Tenant testified that on May 3, 2011 she heard something at the door and when she opened it she saw the Landlord standing there and there was a 10 Day Notice to end tenancy posted to her door. She took off the notice and asked why the Landlord had issued the Notice. She stated that their rent had been reduced to \$850.00 per month due to a flood in their basement that occurred in January 2011 pending the remediation of the basement. The Landlord had not informed them that their rent was going to be raised back to \$1,000.00 so they paid only \$850.00 which is what they have been doing for several months. They were also issued a notice of rent increase that would increase their rent by \$100.00 per month as of August 1, 2011. She stated that she is of the opinion that their application to cancel the 10 Day Notice was filed within the required time frame.

The Landlord testified and confirmed there had been a flood in the basement and the Tenants rent had been reduced to \$850.00. He stated that when he attended the rental unit on April 23, 2011, he met with the male Tenant and informed him verbally that rent would be back to the regular amount of \$1,000.00 as of April 1, 2011. He confirms he served a notice of rent increase to raise the rent to \$1,100.00 as of August 1, 2011. The Tenants paid \$850.00 for April 2011 rent and no action was taken by the Landlord to collect the difference of \$150.00.

The Landlord issued a 10 Day Notice for \$1,000.00 unpaid rent on May 3, 2011. He confirmed the Tenants had paid \$850.00 towards May rent on or before May 2, 2011 and therefore the amount of outstanding rent was only \$150.00. He states he attended the rental unit and knocked on the door and when the female Tenant answered he personally handed her the 10 Day Notice. He claims he did not have a lengthy conversation with her about the amount of rent and simply told her the full rent was due and turned around and walked away.

The Tenant confirmed she had paid \$850.00 towards June 2011 rent pending the outcome of this hearing. She confirmed that she would pay the balance of \$150.00

today for June 2011, now that she had been informed that rent is payable in the amount noted on the tenancy agreement of \$1,000.00.

Analysis

The Landlord confirmed that he did not provide the Tenants with copies of his evidence in contravention of section 3.1 and 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Tenants have not received copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

I have carefully considered all of the testimony and the Tenants' evidence which included a copy of the 10 Day Notice dated May 3, 2011, a copy of the tenancy agreement, and a copy of the Notice of Rent Increase dated April 23, 2011.

Landlord's Application

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Tenants.

After careful review of the 10 Day Notice to End Tenancy I find the Notice not to have been issued in compliance with the *Act*. The Landlord has issued the Notice demanding \$1,000.00 in unpaid rent for May 2011 however the evidence supports that at the time of issuing this the Tenants had paid \$850.00 as their May 2011 rent. Therefore I find the 10 Day Notice dated May 3, 2011 to be void, and of no force or effect and I dismiss the Landlord's request for an Order of Possession, without leave to reapply.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

The evidence supports the parties entered into a mutual agreement that rent would be reduced to \$850.00 per month as a result of the basement flood that occurred in January 2011. There is insufficient evidence to support the Landlord reinstated the rent back to the original amount of \$1,000.00, effective April 1, 2011. In fact the Landlord's inaction of collecting the \$150.00 balance for April supports the credibility of the Tenant's statement that they were not informed of the rent being returned to \$1,000.00 per month. Furthermore the Tenants' concern over the additional rent increase and issuance of the 10 Day Notice is further evidence that there was a breakdown in communication of what rent would be.

Based on the aforementioned I find there to be insufficient evidence to support there is an amount of unpaid rent up to May 31, 2011. Therefore I dismiss the Landlord's request for a monetary order, without leave to reapply.

The Landlord has not been successful with his application; therefore he must suffer the burden of the cost to file his application.

Tenant's Application

In the course of this proceeding and upon review of the Tenant's application, I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the Tenants' request to cancel the Landlord's Notice to End Tenancy for unpaid rent and the Notice of Rent Increase issued April 23, 2011. I dismiss the balance of the Tenants' claim with leave to re-apply.

Having found above that the 10 Day Notice is void, no further analysis is required pertaining to the Tenants' application to have the 10 Day Notice cancelled.

Section 43 of the Act provides: (1) A landlord may impose a rent increase only up to the amount (a) calculated in accordance with the regulations, (b) ordered by the director on an application under subsection (3), or(c) agreed to by the tenant in writing. 43 (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution. (4) [Repealed 2006-35-66.] (5) If a landlord collects

a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The evidence supports the Landlord issued a Notice of Rent increased to raise the rent from \$1,000.00 to \$1,100.00 effective August 1, 2011. The current legislated rent increase amount for 2011 is 2.3% and the allowable amount of a rent increase in this case would be a maximum of \$23.00. ($\$1,000.00 \times 2.3\%$)

After careful review of the Notice I find the Notice of Rent Increase issued April 23, 2011, does not meet the form and content requirements pursuant to sections 52 and 43 of the Act; therefore the Notice of Rent Increase dated April 23, 2011 is void, and of no force or effect.

After consideration of each application I find the Tenants must also bear the burden of the cost to file their application.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The 10 Day Notice to End Tenancy dated May 3, 2011, is HEREBY CANCELLED and is of no force or effect.

The Notice of Rent Increase dated April 23, 2011, is HEREBY CANCELLED and is of no force or effect.

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 03, 2011.

Residential Tenancy Branch