



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDC, OLC, PSF, RR

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; a monetary order in relation to damage or loss; an order the landlord comply with the Act and provide service or faculties required by law and that the tenant be allowed to reduce rent for services and facilities agreed upon but not provided. and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

I determined that portions of the application, outside of the Notice ending tenancy, would not proceed, based upon section 59(5)(a) of the Act which provides the authority decline an application when it does not comply with 59(2)(b) of the Act, by disclosing the full particulars of the claim.

The tenant has not provided a detailed calculation for the monetary portion of her claim, as required. I am unable to determine what portions of her claim relate to a request for compensation and, if so, what amount of compensation she seeks for each item listed. If I were to dismiss the application it is unclear as to what I would be dismissing; therefore, the balance of the application has been declined and the tenant has leave to reapply.

Further, the tenant indicated several matters of dispute on her application and confirmed that the main issue to deal with during this proceeding is the Notice to End Tenancy. 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 dealt with the tenant's request to set aside or cancel the Notice to

End Tenancy for Cause and I dismiss the balance of the tenant's claim with liberty to re-apply. I have made some comment in relation to services provided to the tenant.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on November 5, 2011, be cancelled?

Background and Evidence

The landlord and the tenant agree that a 10 Day Notice to End Tenancy for Unpaid Rent was issued on November 5, 2011, was given to the tenant; she disputed the Notice on November 7, 2011.

A copy of the Notice was not supplied as evidence, but both parties agreed to the form and content of the Notice; that it indicated \$750.00 rent was owed on November 1, 2011; that the tenant must vacate on November 22, 2011, if she failed to pay rent owed.

The tenant referenced 2 past hearings held in relation to the tenancy; I accessed the decisions during the hearing and portions were read to the parties, as they were relevant to some matters before me.

File 779905

This decision was issued on October 4, 2011; both parties attended a hearing in which the tenant applied to cancel a 1 Month Notice ending tenancy for cause. The Notice was cancelled.

File 781089 & 781287

This decision was issued on November 1, 2011; the tenant applied to cancel a 10 Day Notice ending Tenancy for Unpaid rent, the landlord requested an order of possession.

No finding was made in relation to October rent owed; however, the Notice ending tenancy was cancelled and the tenant was given an order to reduce rent by \$100.00 for November, for loss of laundry services. The dispute resolution officer found that the landlord had an ulterior motive for refusing to accept October rent payment, as he wanted his son to move into the unit. The claim for loss of cable TV service was dismissed as the tenant has access to cable, but must supply her own equipment.

The tenancy commenced on October 1, 2010; rent is \$850.00 per month due on the first day of the month. Internet connection is to be included; although access to that service

is in dispute. The parties did not sign a written agreement setting out any costs or services.

During the hearing the landlord stated that he does not issue receipts for any rent payments and that rent is always paid by cash. The tenant testified that when she received the 10 Day Notice for unpaid rent on November 5, 2011, she attempted to pay the rent; the landlord refused to provide her with a written receipt. The tenant wanted something in writing from the landlord that would indicate the tenancy was reinstated but the landlord refused to provide her with any confirmation of payment.

The landlord stated he refused to sign a new agreement that was requested by the tenant. The landlord stated the tenant never attempted to pay him rent.

The tenant's witness played a tape recording of a November 9, 2011, telephone conversation in which the landlord could be heard telling the tenant that he did not wish to rent to the tenant and wanted her to leave. The landlord stated that the person on the tape was not him.

The tenant stated that the landlord has yet to reconnect her internet service which has been in place throughout her tenancy.

The tenant indicated she is able to pay rent by cheque.

Analysis

The landlord has a very clear accent; the tape recording played during the hearing provided me with the confidence to find, on the balance of probabilities, it was the landlord speaking, telling the tenant he did not wish to rent to her. The landlord was not alleging the tenant was failing to pay rent; only that he wanted her to leave. This aligns with the past attempts made to have the tenant evicted.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. **In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.***

(Emphasis added)

In the circumstances before me, I find the version of events provided by the tenant and her witness to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the tenant over the landlord.

Therefore, as my confidence in the veracity of the landlord's testimony and, in the absence of any rent payment receipts having been issued, I find it is reasonable that the tenant was fearful of the absence of any record of a cash payment made. Section 26(2) of the Act determines that a landlord must provide a tenant with a written receipt for any cash payments made. The relationship between the parties has eroded and I find that the landlord's attempts to evict the tenant and his refusal to abide by the Act, by providing receipt for cash payments was unreasonable and a serious breach of the legislation.

Therefore, I find that the Notice ending tenancy issued on November 5, 2011, is of no force or effect. There has been previous finding in relation to rent owed for October, 2011, however; the decision issued on November 1, 2011, did quote the landlord as having said he did not care about October rent as he wanted his son to move into the unit. As a 2 Month Notice Ending Tenancy was not issued, it is apparent that rent is owed for October and November; less \$100.00 Ordered on November 1, 2011.

I Order that the rent may now be paid by cheque. If the tenant wishes to pay by cash the landlord must immediately issue the tenant a receipt for the full amount of the cash payment. Rent is due, in full on the first day of each month and the method of payment is at the discretion of the tenant.

In relation to the internet services; the landlord is warned that if he has altered the ability of the tenant to access a service that was previously available, he must provide notice as required by the Act and adjust the rent accordingly. In the absence of proper Notice and rent reduction the tenant is at liberty to submit a claim setting out the loss she may have suffered.

As the terms of this tenancy are in dispute I have appended a copy of the standard terms of all tenancies in British Columbia for the reference of each party; the parties will be bound by those terms.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent issued on November 5, 2011, is of no force or effect. This tenancy shall continue until it is ended as provided by the Act.

The balance of the tenants claim has been severed and declined; she is at liberty to reapply.

The parties are bound by the appended Schedule of tenancy terms

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: November 21, 2011.

Residential Tenancy Branch

Schedule

[am. B.C. Reg. 234/2006, s. 22.]

Application of the *Residential Tenancy Act*

- 1 (1) The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the *Residential Tenancy Act* or a regulation made under that Act, or any standard term. If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.
- (2) Any change or addition to this tenancy agreement must be agreed to in writing and initialled by both the landlord and the tenant. If a change is not agreed to in writing, is not initialled by both the landlord and the tenant or is unconscionable, it is not enforceable.
- (3) The requirement for agreement under subsection (2) does not apply to the following:
 - (a) a rent increase given in accordance with the *Residential Tenancy Act*;
 - (b) a withdrawal of, or a restriction on, a service or facility in accordance with the *Residential Tenancy Act*;
 - (c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

Security deposit and pet damage deposit

- 2 (1) The landlord agrees
 - (a) that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property,
 - (b) to keep the security deposit and pet damage deposit during the tenancy and pay interest on it in accordance with the regulation, and
 - (c) to repay the security deposit and pet damage deposit and interest to the tenant within 15 days of the end of the tenancy agreement, unless
 - (i) the tenant agrees in writing to allow the landlord to keep an amount as payment for unpaid rent or damage, or

- (ii) the landlord makes an application for dispute resolution under the *Residential Tenancy Act* within 15 days of the end of the tenancy agreement to claim some or all of the security deposit or pet damage deposit.
- (2) The 15 day period starts on the later of
 - (a) the date the tenancy ends, or
 - (b) the date the landlord receives the tenant's forwarding address in writing.
- (3) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both.
- (4) The tenant may agree to use the security deposit and interest as rent only if the landlord gives written consent.

Pets

- 3 Any term in this tenancy agreement that prohibits, or restricts the size of, a pet or that governs the tenant's obligations regarding the keeping of a pet on the residential property is subject to the rights and restrictions under the *Guide Animal Act*.

Condition inspections

- 4 (1) In accordance with sections 23 and 35 of the Act [*condition inspections*] and Part 3 of the regulation [*condition inspections*], the landlord and tenant must inspect the condition of the rental unit together
 - (a) when the tenant is entitled to possession,
 - (b) when the tenant starts keeping a pet during the tenancy, if a condition inspection was not completed at the start of the tenancy, and
 - (c) at the end of the tenancy.
- (2) The landlord and tenant may agree on a different day for the condition inspection.
- (3) The right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not perform the landlord's obligations under sections 23 and 35 of the *Residential Tenancy Act*.
- (4) A right of the tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the tenant fails to perform the tenant's obligations under section 23 and 35 of the *Residential Tenancy Act*.

Payment of rent

- 5 (1) The tenant must pay the rent on time, unless the tenant is permitted under the Act to deduct from the rent. If the rent is unpaid, the landlord may issue a notice to end a tenancy to the tenant, which may take effect not earlier than 10 days after the date the tenant receives the notice.

(2) The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under section 27 (2) of the Act.

(3) The landlord must give the tenant a receipt for rent paid in cash.

(4) The landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord. If the landlord does not have a forwarding address for the tenant and the tenant has vacated the premises without notice to the landlord, the landlord must forward any post-dated cheques for rent to the tenant when the tenant provides a forwarding address in writing.

Rent increase

6 (1) Once a year the landlord may increase the rent for the existing tenant. The landlord may only increase the rent 12 months after the date that the existing rent was established with the tenant or 12 months after the date of the last legal rent increase for the tenant, even if there is a new landlord or a new tenant by way of an assignment. The landlord must use the approved Notice of Rent Increase form available from any Residential Tenancy office or Government Agent.

(2) A landlord must give a tenant 3 whole months notice, in writing, of a rent increase.

[For example, if the rent is due on the 1st of the month and the tenant is given notice any time in January, including January 1st, there must be 3 whole months before the increase begins. In this example, the months are February, March and April, so the increase would begin on May 1st.]

(3) The landlord may increase the rent only in the amount set out by the regulation. If the tenant thinks the rent increase is more than is allowed by the regulation, the tenant may talk to the landlord or contact the Residential Tenancy office for assistance.

(4) Either the landlord or the tenant may obtain the percentage amount prescribed for a rent increase from the Residential Tenancy office.

Assign or sublet

7 (1) The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length of 6 months or more, the landlord must not unreasonably withhold consent. Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.

(2) If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may make an application for dispute resolution under the *Residential Tenancy Act*.

Repairs

8 (1) Landlord's obligations:

(a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must

comply with health, safety and housing standards required by law.

(b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

(2) Tenant's obligations:

(a) The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by that tenant. The tenant is not responsible for repairs for reasonable wear and tear to the residential property.

(b) If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the cost of repairs, serve a notice to end a tenancy, or both.

(3) Emergency repairs:

(a) The landlord must post and maintain in a conspicuous place on the residential property, or give to the tenant in writing, the name and telephone number of the designated contact person for emergency repairs.

(b) If emergency repairs are required, the tenant must make at least two attempts to telephone the designated contact person, and then give the landlord reasonable time to complete the repairs.

(c) If the emergency repairs are still required, the tenant may undertake the repairs, and claim reimbursement from the landlord, provided a statement of account and receipts are given to the landlord. If the landlord does not reimburse the tenant as required, the tenant may deduct the cost from rent. The landlord may take over completion of the emergency repairs at any time.

(d) Emergency repairs must be urgent and necessary for the health and safety of persons or preservation or use of the residential property and are limited to repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit, or
- (v) the electrical systems.

Occupants and guests

- 9** (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- (2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
- (3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

Locks

- 10** (1) The landlord must not change locks or other means of access to residential property unless the landlord provides each tenant with new keys or other means of access to the residential property.
- (2) The landlord must not change locks or other means of access to a rental unit unless the tenant agrees and is given new keys.
- (3) The tenant must not change locks or other means of access to
- (a) common areas of residential property, unless the landlord consents to the change, or
 - (b) his or her rental unit, unless the landlord agrees in writing to, or the director has ordered, the change.

Landlord's entry into rental unit

- 11** (1) For the duration of this tenancy agreement, the rental unit is the tenant's home and the tenant is entitled to quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance, and exclusive use of the rental unit.
- (2) The landlord may enter the rental unit only if one of the following applies:
- (a) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant a written notice which states
 - (i) the purpose for entering, which must be reasonable, and
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant agrees otherwise;
 - (b) there is an emergency and the entry is necessary to protect life or property;
 - (c) the tenant gives the landlord permission to enter at the time of entry or not more than 30 days before the entry;
 - (d) the tenant has abandoned the rental unit;

- (e) the landlord has an order of the director or of a court saying the landlord may enter the rental unit;
 - (f) the landlord is providing housekeeping or related services and the entry is for that purpose and at a reasonable time.
- (3) The landlord may inspect the rental unit monthly in accordance with subsection (2) (a).
- (4) If a landlord enters or is likely to enter the rental unit illegally, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director to change the locks, keys or other means of access to the rental unit and prohibit the landlord from obtaining entry into the rental unit. At the end of the tenancy, the tenant must give the key to the rental unit to the landlord.

Ending the tenancy

- 12** (1) The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month.
- [For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]*
- (2) This notice must be in writing and must
- (a) include the address of the rental unit,
 - (b) include the date the tenancy is to end,
 - (c) be signed and dated by the tenant, and
 - (d) include the specific grounds for ending the tenancy, if the tenant is ending a tenancy because the landlord has breached a material term of the tenancy.
- (3) If this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the *Residential Tenancy Act*.
- (4) The landlord may end the tenancy only for the reasons and only in the manner set out in the *Residential Tenancy Act* and the landlord must use the approved notice to end a tenancy form available from the Residential Tenancy office.
- (5) The landlord and tenant may mutually agree in writing to end this tenancy agreement at any time.
- (6) The tenant must vacate the residential property by 1 p.m. on the day the tenancy ends, unless the landlord and tenant otherwise agree.

Landlord to give tenancy agreement to tenant

- 13** The landlord must give the tenant a copy of this agreement promptly, and in any event within 21 days of entering into the agreement.

Dispute resolution

- 14** Either the tenant or the landlord has the right to make an application for dispute resolution, as provided under the *Residential Tenancy Act*.

Note: *this regulation repeals B.C. Regs. 161/2000, 264/98, 370/99, 125/2001 and 49/96.*

[Provisions of the *Residential Tenancy Act*, S.B.C. 2002, c. 78, relevant to the enactment of this regulation: sections 97, 104 and 115]

(Emphasis added)