



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: DRI, CNR, RPP, LRE, FF
For the landlord: OPR, MNR, FF

Introduction

This hearing dealt with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied to cancel an additional rent increase, to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), an order requiring the landlord to return the tenant’s personal property, an order suspending or setting conditions on the landlords’ right to enter the rental unit, and for recovery of the filing fee.

The landlords applied for an order of possession, for a monetary order for unpaid rent and to recover the filing fee.

The parties appeared and the hearing process was explained to the parties. Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and respond each to the other and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to cancel a notice to end tenancy for unpaid rent, for an order requiring the landlords to return her personal property, for an order suspending the landlords’ right to enter the rental unit, for an order cancelling the additional rent increase, and to recover the filing fee?

Has the tenant breached the *Residential Tenancy Act* or tenancy agreement, entitling the landlords to an order of possession, a monetary order for unpaid rent and to recover the filing fee?

Background and Evidence

This two year, fixed term tenancy began on September 1, 2010, and is to last through September 1, 2012.

The written tenancy agreement signed by the parties on August 31, 2010, states that monthly rent is \$1,025.00 and that the tenant paid a security deposit of \$510.00 on March 1, 2010.

The parties stated that the tenancy actually began in March 2010 for monthly rent of \$1,025.00; however the parties entered into the new written tenancy agreement in September 2010 with the understanding that rent was to be \$1,050.00 instead of the amount of \$1,025.00 listed on the written tenancy agreement.

I heard testimony that the tenant did begin paying the additional rent beginning in September 2010.

The tenant submitted that she received an undated handwritten note from the landlords that the next rent payment (Jan 1/2011) was increase to \$1,100.00 because gas and hydro costs had increased, which is the increase she is contesting. The tenant stated that she believed this rent increase was meant to be effective in January 2012.

The tenant also submitted that the tenant in the lower rental unit vacated the residential property, leaving behind some of the tenant's personal property which she had lent him.

The tenant testified that the landlords are holding her personal property and will not return the items. The items include a washer/dryer, microwave, dishes and a couch.

As to the 10 Day Notice to End Tenancy for Unpaid Rent, the landlords submitted that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on January 8, 2012, by posting on the door. The Notice stated the amount of unpaid rent as of January 1, 2012, was \$1,050.00 and the stated effective move out date was listed as January 17, 2012. The Act states that a document delivered by posting on the door is deemed served three days later. Thus I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to January 21, 2012.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

The landlord testified that the tenant has not paid rent, including the rent due on February 1, 2012, since the issuance of the Notice.

The tenant agreed that she did not pay rent in January or February, and submitted that she did not as the landlords were holding her personal property which was left behind in the lower rental unit and had blocked access to her storage and laundry facility.

In response, the landlords submitted that the tenant in the lower rental unit had purchased the property from the tenant's sister and that the lower tenant had agreed to let the landlords keep the property as compensation for unpaid rent and damages.

The landlords, however, agreed in the hearing to allow access to the lower rental unit in order for the tenant to retrieve the items she claims.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Landlords' Application

I find that that the parties agreed monthly rent, beginning in September 2010, was to be in the amount of \$1,050.00, contrary to the written tenancy agreement. In reaching this conclusion, the tenant acknowledged that she began paying this amount in September 2010 as per their understanding, and did not dispute this was the agreed upon amount.

I also find that the landlord did not attempt to collect the increased amount, only the amount the tenant had been paying since September 2010.

Under section 26 of the Act, the tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where the tenant fails to pay rent when due, the landlords may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice. Where a Notice is disputed, the tenant must be able to show that she does not owe to rent to the landlord or had some other legal right to withhold rent.

Upon hearing from the parties, along with the tenant's confirmation, I am satisfied that the tenant owed the landlords rent when the Notice was issued, that she did not pay the outstanding rent to the landlords within five days of receiving the Notice and the tenant did not establish that she had the legal right to withhold the rent owed.

I therefore find that the landlords are entitled to an order of possession effective **two days** after service on the tenant.

I am enclosing an order of possession with the landlords' Decision. This order is a **legally binding, final order**, and may be filed in the Supreme Court of British Columbia for enforcement should the tenant fail to comply with this order of possession.

As I have found that the tenant failed to pay rent in January 2012, I find that the landlords have established a monetary claim for **\$1,050.00**.

I **grant** the landlord a monetary order under section 67 of the Act for **\$1,050.00**.

I am enclosing a Monetary Order for \$1,050.00 with the landlords' Decision. This Order is a **legally binding, final Order**, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the tenant fail to comply with this Monetary Order.

I decline to consider the issue of unpaid rent for February 2012, as the landlords did not make a claim for this amount and as of the day of the hearing, the landlords had not lost rent for the entire month of February 2012.

Tenant's application:

Due to the above, the tenant's Application for Dispute Resolution seeking a cancellation of the Notice is **dismissed without leave to reapply** as the Notice to End Tenancy issued is valid and enforceable.

As to the portion of the tenant's application requesting an order suspending the landlord's right to enter the rental unit and for an order cancelling the additional rent increase, I find the tenancy is ending and the tenant is no longer in need of the relief requested. I therefore dismiss that portion of her application. In the event the tenancy continues should the landlords not seek enforcement of the order of possession and allow the tenant to remain in the rental unit, the tenant is granted authority to make an application to renew these requests.

As to the tenant's claim for a return of her personal property, I find the tenant is entitled to the return of her property, including the washer/dryer, the microwave, the couch and dishes. The landlords agreed that the tenant may retrieve these items and will make access to the lower rental unit available immediately. I therefore direct the landlords to cooperate with the tenant in reaching a mutually agreeable time to retrieve her property. In the event the landlords do not cooperate, the tenant is granted authority to make a further application for a monetary claim for the value of the items.

As I find that both applications had merit, I decline to award either party recovery of the filing fee.

Conclusion

The landlords are granted an order of possession and a monetary order in the amount of \$1,050.00.

The tenant's application seeking cancellation of the Notice is dismissed, without leave to reapply.

The tenant's application seeking orders for the landlords and cancelling a notice of rent increase is dismissed, with authority to make further application should for any reason the tenancy continue.

The tenant's application seeking a return of her personal property is granted and the landlords are directed to cooperate with the tenant for an immediate return of her property.

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: February 03, 2012.

Residential Tenancy Branch