Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNR, MNDC, FF
Tenants: CNR

Introduction

This matter dealt with an Application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 6, 2012. The Tenants' written submissions also state that they wish to pursue a monetary claim for an alleged overpayment of rent and utilities and for the return of a security deposit. However the Tenants' application for dispute resolution did not include a claim for that relief and they are not permitted to amend their application to add it at this late date. Furthermore, I find that the Tenants' application for the return of a security deposit is premature given that s. 38(1) of the Act says that a Landlord is not required to return it until 15 days following the end of the tenancy or the date the Tenants provide the Landlord with their forwarding address (whichever is later).

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, for compensation for a loss of rental income and to recover the filing fee for this proceeding. The Tenant's advocate argued that the Tenants only received the Landlord's hearing packages on March 23, 2012. However, the Landlord provided copies of her Canada Post registered mail tracking numbers that show the Tenants received the Landlord's hearing packages on March 16, 2012 and her evidence package on March 23, 2012 as she claimed. Consequently, I find that the Tenants were served with the Landlord's hearing packages as required by s. 89 of the Act.

The Landlord's application named two parties as tenants, namely, M.S. and R.K. At the beginning of the hearing, the Tenant, M.S., argued that R.K. was not a tenant and therefore should not be named as a party to these proceedings. However for the reasons set out in the Analysis section of this Decision, I find that R.K. was a Tenant and is therefore properly named as a party in these proceedings.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for a loss of rental income?

Background and Evidence

This month-to-month tenancy started on October 1, 2010. At the beginning of the tenancy, rent was $1,200.00 per month which included heat, electricity, water, cable (or satellite) and high speed internet but did not include telephone. The Landlord said commencing November 1, 2010 the Tenants paid $30.00 per month for telephone service which was in her name. The Tenants admit the telephone service was an extra service but argue that it was an internet service which was included in their rent. The Tenants occupied the upper floor of the rental property which is a house and the lower floor of the property was rented to other tenants under a separate tenancy agreement.

The Landlord said when the downstairs tenants gave their notice in August 2011, she asked the Tenants if they knew of anyone who might want to rent the suite or alternatively if the Tenants wanted to rent the whole house. The Landlord said she know one of the Tenants was an artist and she thought he might want to use it as a studio. The Landlord said the tenants of the lower floor moved out at the end of August 2011 and the Tenants verbally agreed to rent the whole house for $1,800.00 per month. The Landlord said the Tenants told her they could not afford $1,800.00 at that time so she agreed to reduce the rent to $1,500.00 until the end of the year and they agreed to start paying $1,800.00 effective January 1, 2012.

The Tenants argued that they did not have a written agreement with the Landlord to pay more than $1,200.00 per month (as indicated above) and they claimed that any amount they paid over $1,200.00 during the tenancy was an overpayment which they were entitled to recover. The Tenants also argued that they did not use the lower suite during this period and relied on an e-mail of a by-law inspector who claimed that when he saw the suite on March 18, 2012 it was vacant. The by-law inspector also claimed that on the same day a person he believed was a neighbour advised him that the suite was vacant. The Tenants said they have no knowledge who asked the by-law inspector to inspect the rental property. The Landlord said that when she attended the rental property in December 2011, the Tenants had their belongings there including a desk which the Tenants denied.

The Parties agree that the Tenants paid $1,200.00 for rent for March 2012. As a result, on March 6, 2012, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 6, 2012 by posting it to the rental unit door. The Landlord said the Tenants have not paid the outstanding rent for March.

Analysis

At the beginning of the hearing, the Tenants admitted that they were moving out of the rental unit on March 31, 2012 and as a result, the Parties agreed that the Landlord would receive an Order of Possession to take effect on March 31, 2012.

The Tenants provided copies of bank deposit receipts which show that they paid $1,230.00 each month until September 2011 at which time they began paying $1,500.00 per month until January 2012 when they paid $1,800.00 for that month and for February 2012. The Tenants also provided a receipt in the amount of $1,200.00 for March 2012. The Tenants claimed that the Landlord threatened to evict them if they did not pay the rent increase which the Landlord denied.

The Tenants also provided a copy of an e-mail of a by-law inspector who said the lower suite was vacant when he inspected it on March 18, 2012. However, the Landlord argued that the Tenants likely had moved their belongings by that time as they already had given their notice. I do not find this e-mail helpful because it does not address whether the suite was occupied or unoccupied on any other date prior to March 18, 2012. I also note that the by-law inspector's e-mail claimed that a person he thought was a neighbour told him the suite was vacant, however this is double hearsay evidence which is inherently unreliable and for that reason, I cannot give it any weight.

The Landlord provided a copy of an e-mail to the Tenants dated August 24, 2011 in which she wrote as follows:

> "[*the downstairs tenant] told me that they have moved out and will be doing the carpets and handing the keys over to you two. Hope that works for you.....are you okay if I do not do up a new rental agreement? Or would you prefer I do one? Your choice, I am fine with our verbal agreement? So how does it feel to have the whole place to your selves*?"

I find that the evidence on a whole corroborates the Landlord's version of events rather that the Tenants'. Furthermore, I find that it does not stand to reason that the Tenants would pay a *substantial* increase in rent if they had not agreed to rent the whole property and I did not find the Tenants' argument that they feared they would be evicted if they did not pay the increase to be credible. Consequently, I find that the Tenants verbally agreed to rent the whole property as of September 1, 2011 for $1,500.00 per month until the end of the year and then for $1,800.00 per month thereafter. As a result, I find that rent for March 2012 was $1,800.00 and that as a result, the Landlord is entitled to recover unpaid rent of $600.00.

The written tenancy agreement was signed by only one of the Tenants named on the Landlord's application, namely, M.S. However, I find that all of the Parties entered into a new (verbal) tenancy agreement effective September 1, 2011 for the whole of the rental property at a new rate of rent but with no change to any of the other terms set out in the written agreement. Consequently, I find that R.K. also became a Tenant as of September 1, 2011 and is properly named as a party in these proceedings.

I find that the Landlord's application for a loss of rental income for April 2012 is premature and that part of her application is dismissed with leave to reapply. The Landlord is entitled pursuant to s. 72 of the Act to recover from the Tenants the $50.00 filing fee for this proceeding.

Conclusion

The Tenants' application is dismissed without leave to reapply. An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **$650.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenants; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 28, 2012.

Residential Tenancy Branch