



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: MNR, MNDC, FF
Tenant: CNR, DRI, MNDC, OLC, FF

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid rent, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding. The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 2, 2012, to dispute a rent increase, for compensation for damage or loss under the Act or tenancy agreement, for an Order that the Landlord comply with the Act or tenancy agreement and ;to recover the filing fee for this proceeding.

At the beginning of the hearing, the Tenant withdrew his application to cancel the 10 Day Notice to End Tenancy and the parties agreed that the tenancy would end on June 1, 2012.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

On February 22, 2011, the Parties entered into a written agreement for a month-to-month tenancy starting on March 1, 2011 at a rental rate of \$700.00 per month payable in advance on the 1st day of each month plus utilities. The Tenant paid a security deposit of \$350.00. The rental property is a house that contains four suites one of which is occupied by the Tenant and one of which is occupied by the Landlords.

On or about October 1, 2011 the Tenant entered into a written agreement with another tenant of the rental property that she would pay \$100.00 more each month for rent and that the Tenant would pay \$100.00 less each month for rent until such time as he vacated the rental property. The Tenant said the agreement was not that the other tenant would pay \$100.00 of the rent on his behalf but rather she agreed to a rent increase and to his rent being reduced by \$100.00. The Tenant said the Landlord, D.B., signed this agreement. The Landlords argued that this agreement was just between

two tenants and was not an amendment of either of their tenancy agreements. The Landlords said by signing the agreement, D.B. merely acknowledged the arrangement and this was demonstrated by providing receipts each month to the Tenant for \$600.00 and to the other tenant of the rental property for \$100.00. On January 26, 2012, the other tenant of the rental property gave the Tenant notice in writing that she would no longer pay \$100.00 per month on his behalf effective March 1, 2012. The Parties agree that the Tenant paid \$600.00 for rent in March, April and May, 2012.

Consequently, the Landlords claim that the Tenant has rent arrears of \$100.00 for each of March, April and May 2012. The Landlords also seek late rent payment fees of \$25.00 for July, August and September 2011 and for May 2012. The Tenant argued that the Landlords told him it would be alright if he was late paying rent by a couple of days. The Landlords denied this and said when the Tenant was initially late they notified him by telephone but he did not seem to take them seriously so they began giving him written notices. The Landlords also claimed that they asked the Tenant if he was going to pay the late payment fees but he refused.

The Tenant said at the beginning of the tenancy, the Landlords provided cable service to the rental property and he paid a portion of the cost to the Landlords. The Tenant said that in March 2012, he decided to have his own cable service installed. The Tenant claimed that his cable service was installed on March 6, 2012 and he advised the Landlord, D.B., about it and that he did not need to take any steps to disconnect the previous service, however D.B. disconnected his service. The Tenant gave his notice ending the tenancy later that day. The Tenant said for the next week, Landlords would not take his calls or respond to his messages so he had to have the service provider attend the property. When the service provider attended the property on March 6, 2012, the Tenant said the Landlord, D.B., wanted to gain entry to the rental unit with the service provider technician based on a term in the tenancy agreement he claimed gave him authority to do so. The Tenant said D.B. became very angry when he denied D.B. access and he would not allow the Tenant to close the door.

The Tenant also claimed that for each of the months of March, April and May 2012, D.B. harassed him by telling him that the rent was \$700.00 per month and wanted to know where the rest of it was. The Tenant said this caused him a great deal of stress. The Landlords denied the Tenant's allegations and claimed that once they received the Tenant's notice he was ending the tenancy, they did not pursue him for the underpayment of rent but instead just issued him receipts for what he paid.

Analysis

I find that the agreement signed by the Tenant, the upstairs tenant and the Landlord, D.B., on September 29, 2011 was an agreement between D.B. and his two tenants to amend their respective tenancy agreements. In particular, I find that the Parties agreed that effective October 2011 until the end of the tenancy the Tenant's rent would be

reduced to \$600.00 per month and the upstairs tenant's rent would be increased to \$900.00 per month. In coming to this conclusion, I find it significant that the Landlord, D.B., participated in drafting the agreement with the other tenant and that the agreement said nothing about the other tenant paying rent on the Tenant's behalf. Consequently, I find that no rent is owed by the Tenant and that part of the Landlords' claim is dismissed without leave to reapply.

I find however, that the Landlords are entitled to recover late payment fees pursuant to a term of the Parties tenancy agreement to that effect. Although the Tenant argued that the Landlords' told him he could be a day or two late with the rent, I find that there is no evidence to corroborate that allegation. The Landlords, on the other hand, provided copies of breach letters for non-payment of rent dated August 2, 2011, September 2, 2011 and a 10 Day Notice to End Tenancy for Unpaid Rent dated May 2, 2012 in support of their position that they did not give the Tenant permission to pay rent late. Consequently, I conclude that the Tenant made four late rent payments during the tenancy and accordingly award the Landlords the amount of \$100.00.

Section 28 of the Act says that a Tenant is entitled to quiet enjoyment which includes the right to freedom from unreasonable disturbance and exclusive possession of the rental unit subject only to the landlord's right to enter in accordance with s. 29 of the Act. Section 29 of the Act says that unless there is an emergency or the Tenant agrees to waive the notice provisions of the Act *at the time of entry*, a landlord must give a Tenant 24 hour's written notice to enter the rental unit.

The addendum to the Parties' tenancy agreement contains a term (clause #8) that "the tenant will agree to a verbal request by the Landlord to entering the rental unit." The Tenant said he believed this term only gave the landlords authority to enter the rental unit for emergency reasons if he was not home and did not give them authority to enter whenever they wanted. I find that clause #8 of the Addendum to the tenancy agreement contravenes section 29 of the Act and is therefore of no force and effect pursuant to s. 5 of the Act. However, I also find that there was no evidence that the Landlord, D.B., entered the rental unit without the Tenant's permission.

Furthermore, I find that there is insufficient evidence to conclude that the Landlords repeatedly told the Tenant that he owed them more for rent. Even if the Landlords did ask the Tenant to pay more rent, I would not conclude that this conduct constitutes "harassment" as alleged by the Tenant. A Landlord has a right to request the rent they believe is payable under the tenancy agreement. If the Tenant believes this is not a lawful request, then the Tenant's recourse is to dispute an alleged rent increase which is what he has done in this matter. I also find that there is insufficient evidence that the Landlords intentionally cut off the Tenant's cable service after it was installed. For all of these reasons, I find that there is insufficient evidence that the Tenant's right to quiet enjoyment has been breached and his claim for compensation on that basis is dismissed without leave to reapply.

In summary, I find that the Landlords are entitled to a monetary award of \$100.00. As each of the parties has been partially successful on their applications, I make no award of their respective filing fees as they would be offsetting in any event.

Conclusion

The Tenant's application to cancel a 10 Day Notice to End Tenancy is withdrawn. The Tenant's application to dispute a rent increase is granted and the balance of the Tenant's application is dismissed without leave to reapply. The Landlords' application to recover late fees is granted and the balance of their application is dismissed without leave to reapply.

A Monetary Order in the amount of \$100.00 has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

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: May 31, 2012.

Residential Tenancy Branch