



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

DRI, CNR, OLC, LRE, LAT
OPR, OPB, MNR, MND, MNDC

Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the tenant is to dispute an additional rent increase, cancel a notice to end tenancy for unpaid rent, order the landlord to comply with the Act, suspend or set conditions on the landlord's right to enter and authorize a tenant to change the locks.

The application by the landlord is for an order of possession for unpaid rent, an order of possession for breach of the tenancy agreement, a monetary order for unpaid rent, a monetary order for damages and money owed or compensation due to damage or loss.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This tenancy began September 22, 2008 with monthly rent of \$750.00 and the tenant paid a security deposit of \$375.00.

On June 8, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

The tenant's agent testified that the landlord or agents of the landlord have been entering the rental unit without providing the tenant proper 24 hour written notice. The tenant's agent stated that after the landlord had contacted the tenant that she wanted to sell the property the landlord sent her agent to the property and then made arrangement to have the yard cleaned up and to have cleaners enter the rental unit and start cleaning and packing the tenant's belongings.

The tenant's agent stated that the landlord during this time also had the locks changed and that neither she nor the tenant had been provided with a key for the new locks. The tenant's agent stated that as the tenant has 4 cats, she had to boost her young son through a window to gain access to the rental unit and feed the cats. The tenant's agent stated that due to the lack of proper notice being given to the tenant, the tenant is seeking an order for the landlord to comply with the Act, to suspend or set conditions on the landlord's right to enter and to authorize the tenant to change the locks.

The landlord testified that the locks had been changed at a cost of \$150.00 to the landlord but only because the tenant had told the landlord that he had changed the locks and not provided her with a key to the new locks. The tenant's agent refuted this testimony by stating that the landlord and or her agents did have access to the rental unit as they had been inside cleaning and packing the tenant's belongings prior to the date that the locks were changed. The tenant's agent stated that the tenant had changed the lock on one of the doors that had a seized handle but that all of the remaining locks were original to the start of the tenancy. The tenant's agent stated that an agent of the landlord continues to enter the rental unit without providing proper notice.

The landlord stated that cleaning staff had been sent to the property as the tenant kept promising that he would clean but that he never did. The landlord also stated that on one occasion entry was made to complete emergency repairs on the sump pump in the crawl space to avoid the basement from flooding.

The tenant's agent stated that during the tenancy the landlord twice gave the tenant a rent increase without providing proper notice per the Act. The landlord acknowledged that in May 2011 the tenant was notified by email that rent was increasing by \$50.00 per month (\$750.00 to \$800.00) and again by email in May 2012 that rent was increasing by \$200.00 per month (\$800.00 to \$1000.00).

The landlord stated that the notice for unpaid rent was given to the tenant as over the length of the tenancy the tenant has accrued a total of \$6210.00 in unpaid rent. The landlord's documentation reflects payment from the tenant as: 2009, \$4835.00 rent paid; 2010, \$10,035.00 rent paid; 2011, \$10,690.00 rent paid and 2012, \$5750.00 rent paid for a total of \$31,310.00 in rent paid.

The landlord stated that because of the condition of the property she had to hire cleaners at a cost of \$500.00 to clean inside the rental unit. The landlord stated that the yard was also in a terrible state with debris on the property, a dog kennel that the tenant had taken down but not removed and an old shed that the tenant had agreed to remove in exchange for rent but did not remove. The landlord stated that she had to hire 3 men for 5 days at a cost of \$2000.00 to have the yard cleaned up.

The tenant's agent stated that her mother had agreed to clean the inside of the rental unit and had thoroughly cleaned 1 bedroom but that when she returned to do more cleaning, the cleaners hired by the landlord were in the rental unit. The tenant's agent

stated that her mother did not feel comfortable returning, not knowing what strangers would be in the rental unit. The tenant's agent stated that the dog kennel had been taken down as it was full of rabbit feces and a health hazard and that the tenant and landlord had discussed the tenant taking the shed down but that they did not have an agreement in writing in this regard.

The landlord stated that the tenant has also removed the front deck which the landlord estimates will cost at least \$800.00 to replace and that the floors and carpets are damaged by the tenant's cats and will the estimated replacement cost is \$5000.00. The landlord stated that as she does not have possession of the rental unit she has not been able to steam clean the carpets to see if they in fact need to be replaced. The tenant's agent stated that the front deck had been removed as it was rotten and had holes in it which made it very dangerous for people to walk on, and that it was removed with the landlord's consent. The landlord responded by stating that there had been consent to remove the deck but that the tenant had also agreed to replace the deck and never did.

The landlord commented that there is also a hole in one wall and scratches on walls from the tenant's cats and that she does not yet know what repairs will be required in the rental unit.

The landlord did express concern about the wood stove in the rental unit as the front glass of the wood stove is cracked. The landlord stated that she did not want the stove used as it now creates a fire hazard. The tenant's agent stated that there is a furnace in the rental unit and agreed in this hearing that the wood stove would not be used in its current condition.

After some discussion the parties agreed to mutually end the tenancy effective June 30, 2012 at 1:00PM. Both parties understand that that the parties together are required per the *Act* to complete a move out inspection.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to an order for the landlord to comply with the *Act*.

The landlord did not provide the tenant with proper notice for either the May 2011 or May 2012 rent increase and until such time as the landlord does provide proper notice, the rent will remain at \$750.00 per month.

The landlord and or agents of the landlord have entered and continue to enter the rental unit without providing the tenant or his agent proper 24 hour written notice per the *Act*. And although the landlord has a realty agent who is showing the property, proper notice is still required and cannot be opted out.

As far as setting conditions on the landlord's right to enter, the landlord and or their agent may enter with proper notice however the landlord does not have the right of entry to clean the rental unit or pack the tenant's personal belongings.

The landlord agreed in this hearing to have the locksmith contact the tenant's agent and provide keys for the new locks. However as the tenancy is ending by mutual agreement, I do not find it necessary to allow the tenant to change the locks.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for unpaid rent.

The landlord's documentation reflects payment from the tenant as: 2009, \$4835.00 rent paid; 2010, \$10,035.00 rent paid; 2011, \$10,690.00 rent paid and 2012, \$5750.00 rent paid for a total of \$31,310.00 in rent paid. The time period of January 2009 through July 2012 spans 43 months which at \$750.00 per months equals \$32,3250 in rent due. Therefore the balance of unpaid rent due to the landlord is \$940.00 (\$31,310.00 in rent paid minus \$32,3250 in rent due equals \$940.00 rent owed)

In regards to the landlord's request for \$2000.00 compensation for cleaning up the yard and removing the dog kennel and shed, I find that the landlord is not entitled to this amount. The landlord in early April 2012 when she decided to list the property for sale, was anxious to have the property cleaned up for showing to prospective buyers. The tenant within a week or two of being asked to clean up the property was out of town working and did not have the opportunity to clean the property and I find it unreasonable for the landlord to now expect the tenant to pay the cleanup bill. The landlord wanted the property to look a certain way for the sale however the condition of the property was not left in such a deplorable state by the tenant to warrant this expense the tenant's responsibility. Therefore this portion of the landlord's claim is dismissed without leave to reapply.

In regards to the landlord's claim for \$500.00 in cleaning costs for the interior of the rental unit, again the landlord did not give the tenant the opportunity to have the rental unit cleaned and with better communication between the parties the landlord may have learned that the tenant was in fact having the rental unit cleaned. Although perhaps not as quickly as the landlord wanted. Therefore this portion of the landlord's claim is dismissed without leave to reapply.

In regards to the landlord's claim for \$150.00 in re-keying of the locks, I accept the tenant's agents testimony where it is was stated that the landlord always had access to the rental unit and did not need to change the locks as the landlord had her cleaners in the rental unit weeks prior to the locks being changed. Therefore this portion of the landlord's claim is dismissed without leave to reapply.

As the landlord has not yet incurred a loss in replacement of the deck or floors in the rental unit, these portions of the landlord's claim are dismissed with leave to reapply.

Accordingly I find that the landlord is entitled to a monetary order for \$940.00.

By mutual agreement this tenancy will effectively come to an end June 30, 2012 at 1:00PM.

As both applications had merit, I decline to make an order regarding the filing fees and each party will assume responsibility for the costs associated with their application.

Conclusion

By mutual agreement this tenancy will effectively come to an end June 30, 2012 at 1:00PM.

I find that the landlord has established a monetary claim for \$940.00 in unpaid rent and I grant the landlord a monetary order under section 67 for the amount of **\$940.00**.

If the amount is not paid by the tenant(s), 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: June 12, 2012

Residential Tenancy Branch