



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, RP, PSF, OPR, MNR, FF

Introduction

This hearing dealt with cross applications. The tenants filed to seek Orders for the landlord to comply with the Act, regulations or tenancy agreement; to make repairs; and, to provide services or facilities required by law. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

Although the tenants did not indicate the dispute code that corresponds to dispute of a 10 Day Notice to End Tenancy for Unpaid Rent on their Application for Dispute Resolution, a document accompanied their Application and was served upon both the Branch and to the landlord indicating a 10 Day Notice to End Tenancy was under dispute. As I found the document clearly indicated the tenants were disputing the 10 Day Notice to End Tenancy I amended the tenant's Application to indicate such a dispute code.

The landlord stated that a second Application for Dispute Resolution was filed by the landlord's relative on her behalf. I did not have a second landlord's Application for Dispute Resolution before me. The landlord stated she did not have a copy of the Application for Dispute Resolution before her and that she could not provide specific information as to the date it was filed or the remedy sought. A search of the Branch records did not reveal any other Application for Dispute Resolution filed on behalf of the landlord for this property. Accordingly, I did not deal with any other Application other than the Application for Dispute Resolution identified in the Introduction.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession and Monetary Order for unpaid rent?
3. Is it necessary to issue Orders against the landlord for compliance, to make repairs, and/or to provide services and facilities?

Background and Evidence

There is no written tenancy agreement although the landlord has signed three "Intent to Rent" forms for each of the three persons residing in the rental unit. I was not provided copies of the Intent to Rent forms; however, the parties agreed that the forms indicate the tenants are to pay monthly rent of \$400.00 each.

It was undisputed that on November 16, 2012 the landlord personally served the tenants with a 10 Day Notice to End Tenancy for Unpaid rent indicating rent of \$1,200.00 was outstanding as of November 1, 2012.

It was also undisputed that hydro is currently incapable of being connected to the property due to electrical work required before BC Hydro will connect a hydro meter to the property. The house has been without a hydro meter since before this tenancy began.

The landlord submitted that she discovered the female tenant (CL) residing in the rental unit in August 2012 and that the two reached a verbal agreement whereby the tenant would pay rent of \$1,350.00 per month. The rent was subsequently changed to \$1,200.00 per month. The landlord provided several different submissions as to the payments collected from or on behalf of the tenants. Eventually, the landlord made a final submission that the landlord received a security deposit totalling \$600.00 and that she received the following rent payments:

September 2012	\$ 600.00
October 2012	1,200.00
November 2012	nil
December 2012	1,200.00

The tenant submitted that rent of \$1,350.00 was never agreed upon but that the agreement was as follows: the monthly rent would be \$1,200.00 after a hydro was

connected and that rent would be \$600.00 until such time. The tenant submitted that it was expected that it would take approximately one month to connect the hydro to the property.

The landlord denied that there was such an agreement for reduced rent of \$600.00 per month. When I pointed out that the landlord had not issued a 10 Day Notice for the unpaid rent for September 2012 the landlord acknowledged she did not issue a 10 Day Notice to End Tenancy for the September rent but she stated that she had called the police instead. The tenant acknowledged that the police attended the property because the landlord had told the police that she did not know who the people occupying the rental unit were. When the tenants showed the police their signed "Intent to Rent" forms the police informed the landlord that this was a matter for the Residential Tenancy Branch.

The tenant submitted that without hydro they do not have heat; they do not have hot water, except if hot water is boiled on the gas stove; and, they do not have a fridge or lights unless they run a generator. Essentially, the rental unit is merely a place to sleep.

The landlord was of the position the tenants have made it difficult to have the electrical work completed because the rental unit is cluttered. The tenant submitted that possessions were cleared away from the walls as requested.

It was confirmed that the landlord has not issued written 24 hour notices in order to gain entry into the rental unit for purposes of completing the electrical work. The landlord stated that she does not have a copy of the key to the rental unit. The tenant was agreeable to providing the landlord with a copy of the key.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

After hearing from both parties, I find, on the balance of probabilities, that the parties agreed that rent would be \$1,200.00 after a hydro meter was connected and that rent would be \$600.00 until then, as submitted by the tenant. I make this finding based upon the following considerations:

- The landlord's testimony frequently changed with respect the amount of rent payable and paid as well as the amount of the security deposit paid;

- The tenants paid rent of \$600.00 for September 2012 and the landlord did not issue a 10 Day Notice for unpaid rent for September 2012;
- The landlord did not include \$600.00 of unpaid rent for September 2012 in the 10 Day Notice issued in November 2012; and,
- The living accommodation was provided without a hydro connection and, as such, it is very reasonable that a tenant would agree to pay less for a house without an electrical connection than a house with such capability.

Since the hydro meter has not yet been connected, I find that the rent has remained at the reduced rate of \$600.00 per month. Accordingly, I find that the \$1,200.00 in payments received in October 2012 satisfied the rent due for both October 2012 and November 2012. Therefore, I find there was no outstanding rent for November 2012 and the landlord did not have a basis to issue the 10 Day Notice on November 16, 2012.

In light of the above, I grant the tenant's request to cancel the 10 Day Notice issued November 16, 2012 with the effect that this tenancy continues. I also dismiss the landlord's requests for an Order of Possession and Monetary Order for unpaid rent.

Further, I find the payments of \$1,200.00 received from the Ministry for December 2012 to be payment of rent due for December 2012 and January 2013. If payments were received from the Ministry for January 2013 such payments are deductible from future months' rent or otherwise recoverable by the tenants.

Since the tenancy continues I find it necessary and appropriate to issue the following ORDERS to both parties:

1. The tenants are ordered to immediately provide the landlord with a copy of the key to the rental unit;
2. The landlord is ordered to complete the necessary electrical work and have a hydro meter installed on the property within 30 days of this decision.
3. Any requirement for the tenants to move or relocate their possessions must be done in writing and with a reasonable amount of advance notice to the tenants.
4. The rent shall remain at the reduced rate of \$600.00 per month until such time the electrical work described above is completed and written notice has been given to the tenants as described below.
5. Upon completion of the electrical work described above the landlord must notify the tenants, in writing, of such so as to put the tenants on notice that rent shall resume to \$1,200.00 for the following month.

6. The landlord must comply with subsections 29(1)(a) or (b) of the Act in order to gain access to the rental unit to complete the electrical work or for any other reason, except for an emergency situation where entry is required to protect life or property.

Below, I have reproduced subsections 29(1)(a) and (b) of the Act for the parties' reference:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

For further reference, I have also reproduced section 32 of the Act which provides for obligations to repair and maintain a rental unit and residential property:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Conclusion

The landlord's Application has been dismissed entirely.

The 10 Day Notice to end Tenancy has been set aside and the tenancy continues. The monthly rent remains at a reduced amount of \$600.00 until such time the landlord provides the tenants with written notice that she has completed electrical work and a hydro meter has been installed. I have issued various orders to the parties, as contained within this decision.

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: January 08, 2013.

Residential Tenancy Branch

