



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNR, MNDC, CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- a determination regarding his dispute of an additional rent increase by the landlord pursuant to section 43.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss the tenant's application with one another. The tenant confirmed that the landlord handed him the 1 Month Notice on July 1, 2013, the same date as that Notice was issued. The landlord confirmed that the tenant handed him a copy of the tenant's dispute resolution hearing package on July 5, 2013. Both parties confirmed that they exchanged written evidence with one another well in advance of this hearing. I am satisfied that the above documents were served to one another in accordance with the *Act*.

At the hearing, I could not locate some of the written evidence presented by the tenant's lawyer in advance of the hearing. The landlord confirmed that he had received this written evidence and we discussed it at the hearing. Subsequent to the hearing, I was able to locate these documents, which had been filed out of order, but were present in the written evidence I have considered. I apologize to both parties for any confusion that this may have caused during the hearing.

At the commencement of the hearing, the landlord requested an Order of Possession based on the 1 Month Notice if the tenant's application to cancel the landlord's 1 Month Notice were dismissed.

Preliminary Issue – 1 Month Notice

At the commencement of the hearing, I noted that the effective date for the landlord's requested end to this tenancy was incorrectly shown as August 1, 2013. I advised the parties that the earliest possible date that the landlord could end this tenancy based on the date of service of 1 Month Notice was August 31, 2013.

The tenant's lawyer advocate (the tenant's lawyer) advised that the tenant has found alternative accommodations and is planning to vacate the rental unit by August 10, 2013. As such, the tenant's lawyer advised that the tenant was seeking a mutual agreement to end this tenancy on that date. Although the landlord was pleased to learn that the tenant was planning to end his tenancy by August 10, 2013, the parties were unable to settle the monetary issues arising out of the tenant's application and this tenancy, despite lengthy efforts to do so. These discussions pursuant to section 65 of the *Act* between the landlord, the tenant, the tenant's lawyer and the tenant's interpreter took much of the allotted time for this hearing. As no mutual settlement agreement ensued from these discussions, I heard sworn testimony from both parties as to the tenant's application.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to a monetary award for losses arising out of this tenancy or for emergency repairs to the rental unit? What is the correct monthly rent for this tenancy?

Background and Evidence

According to the terms of the written Residential Tenancy Agreement (the Agreement) entered into written evidence, this tenancy for a room on the ground floor of this rental home commenced on December 1, 2011. Monthly rent according to the Agreement was set at \$500.00, payable in advance on the first of each month. The tenant shared common areas on the ground floor with another of the landlord's tenants who also paid rent directly to the landlord. The landlord continues to hold the tenant's \$250.00 security deposit paid on December 1, 2011.

The tenant's lawyer entered into written evidence a copy of a Shelter Information document completed by the landlord on February 20, 2012, in which the tenant requested a shelter allowance from the Ministry of Housing and Social Development

(the Ministry). On that document, the monthly rent was identified as \$580.00 as of March 1, 2012, the stated commencement date for the rental of this unit.

The tenant and his lawyer maintained that the landlord had illegally increased the tenant's monthly rent from \$500.00, the stated amount on the Agreement, to \$580.00 during much of 2012 and \$570.00 for most of 2013. The tenant's lawyer entered into undisputed written evidence a list of cheque payments and amounts, which revealed that the tenant paid \$500.00 in rent until March 1, 2012, at which time he commenced paying \$580.00 until February 1, 2013. As of February 1, 2013, the tenant paid \$570.00 in monthly rent. The tenant's lawyer also submitted a copy of a June 26, 2013 handwritten letter in which the landlord stated that the tenant's rent would be increasing to \$650.00 per month as of August 1, 2013.

The landlord confirmed that the tenant has been paying \$580.00 in monthly rent for most of 2012 and \$570.00 for most of 2013. He testified that the tenant requested to pay these amounts. He alleged that the tenant made this request as a means of obtaining more shelter assistance and/or other benefits from the Ministry. The landlord did not dispute the tenant's claim that the landlord did not issue any official notices of rent increase on the required RTB forms. He did not dispute the tenant's claim that the landlord was seeking a rent increase to \$650.00 as of August 1, 2013.

The tenant's lawyer also entered into written evidence a copy of a note from the landlord to the tenant in which the landlord committed to pay the tenant \$120.00 for carpet cleaning costs that the tenant incurred at the beginning of the tenancy, \$70.00 for lock replacement and a \$10.00 "tip" for a total of \$200.00. In his note, the landlord agreed to make this \$200.00 payment to the tenant "once you give me rent for July 2013." At the hearing, the landlord confirmed that he was not disputing the tenant's claim that the landlord had not honoured that commitment to pay the tenant \$200.00 or that the tenant was entitled to this payment for repairs and costs the tenant had incurred during this tenancy.

The tenant's application for a monetary award of \$2,020.80 included the following items listed in a document entered into written evidence by the tenant's lawyer:

Item	Amount
Bar Refrigerator	\$154.56
Lock	49.27
Deadbolt	16.97
Damages for Loss of Quiet Enjoyment (18 months @ \$100.00 per month =	1,800.00

\$1,800.00)	
Total of Above Items	\$2,020.80

The tenant's claim for loss of quiet enjoyment was due to the landlord's failure to repair defective appliances (including a refrigerator which the tenant replaced at his own cost), harassment by the landlord, illegal entry into the rental unit, and there being noisy parties in the rental building until 1:00 a.m. on weekends. The tenant's lawyer noted that the tenant complied with the landlord's "illegal" request for a rent increase as the tenant was a recent immigrant with limited English or awareness of his rights. The tenant was able to obtain shelter assistance from the Ministry.

At the hearing, the landlord claimed that there was no need to replace the refrigerator, but that the tenant could take the small refrigerator he had purchased during the tenancy with him at the end of this tenancy.

The landlord entered into written evidence a copy of his 1 Month Notice issued on July 1, 2013. In that Notice, the landlord cited the following reasons for the issuance of the Notice:

Tenant has allowed an unreasonable number of occupants in the unit/site

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;...*

Tenant has engaged in illegal activity that has, or is likely to:...

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord...*

Tenant has not done required repairs of damage to the unit/site or property/park...

At the hearing, the landlord clarified that he had no direct evidence that the tenant had engaged in illegal activity. However, he maintained that one of the tenants in this rental building, the tenant's "roommate" who shares some common areas with the tenant in the ground floor has had his life threatened by the tenant. He said that police were

called with respect to that threat, although no charges were laid and the landlord does not have a copy of the police report regarding that incident.

The landlord also testified that the tenant had repaired a toilet he had broken and, as a result, the landlord was no longer pursuing the 1 Month Notice on the basis of the tenant's failure to conduct required repairs to the rental property. The landlord continued to maintain that the tenant had significantly interfered with or unreasonably disturbed other occupants of this rental building, including other tenants in this building.

Analysis – 1 Month Notice and Oral Request for an Order of Possession

As the tenant is planning to vacate the rental premises by August 10, 2013, the tenant did not provide sworn testimony to seek a cancellation of the landlord's 1 Month Notice.

Based on the landlord's written evidence, including statements from other tenants in this rental building, and the landlord's sworn testimony, I find that the landlord had cause to issue the 1 Month Notice. Since the tenant is vacating the rental premises shortly, it would appear that there will be little need for the landlord to use the Order of Possession he has requested. However, in the absence of a settlement agreement between the parties for the tenant's application, I find that the earliest date that I can issue an Order of Possession is August 31, 2013, the corrected effective date of the landlord's 1 Month Notice. Should the tenant abandon the rental unit before that date or return the keys to the landlord and yield vacant possession on August 10, 2013 (or before August 31, 2013), the landlord is able to gain access to the rental unit in accordance with the provisions of the *Act*. At any rate, I issue an Order of Possession to the landlord to take effect by August 31, 2013.

Analysis – Tenant's Application for a Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 28 of the *Act* outlines a tenant's right to quiet enjoyment of the premises as follows:

Protection of tenant's right to quiet enjoyment

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference...*

While the tenant has found the actions of other residents in this rental building upsetting, the landlord's written evidence and his sworn testimony maintain that the tenant disrupted the quiet enjoyment of others in this rental property. Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required. The landlord decided to issue a 1 Month Notice to the tenant and the tenant has decided to end his tenancy earlier than the corrected effective date of that Notice. Under the circumstances, I find insufficient evidence to demonstrate that the tenant is entitled to a monetary award for loss of quiet enjoyment of his tenancy. I dismiss the tenant's application for a monetary award for loss of quiet enjoyment without leave to reapply.

Section 32 of the *Act* establishes a landlord's responsibility to repair and maintain rental premises. Based on the written evidence and sworn oral testimony before me, I accept that the landlord has failed to honour his July 2013 commitment to reimburse the tenant \$200.00 for repairs and carpet cleaning costs that the tenant incurred. I issue a monetary award in the tenant's favour in the amount of \$200.00 for these items. As discussed at the hearing, the tenant is allowed to take the refrigerator he purchased for use during his tenancy.

Section 65(1)(c)(i) of the *Act* allows me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that a landlord has not complied with the *Act*, the regulations or a tenancy agreement.

There is no dispute between the parties that the amount paid on the tenant's behalf for monthly rent as of March 1, 2012 was significantly higher than that identified on the Agreement that took effect on December 1, 2011. The tenant's lawyer is correct in noting that a landlord cannot arbitrarily increase a tenant's monthly rent, in this case by \$80.00 per month (16%), three months after a periodic tenancy begins. In order to seek even an increase allowed under the *Act* and the regulations, (4.3% in 2012 and 3.8% in 2013), a landlord must give a tenant three month's written notice of a rent increase on the RTB's form for doing so. There is no evidence that any such notice on the required forms was provided by the landlord. The only documentary evidence provided was a copy of the landlord's completion of the Ministry's Shelter Allowance Form and a handwritten request from the landlord to increase the rent to \$650.00 for August 2013.

The landlord testified that the tenant requested the increase in rent for March 2012 so that he could in some way obtain more funding from the Ministry. I find the landlord's claim in this regard difficult to follow and lacking in authenticity. Other than the landlord's claim that the tenant is a liar and proficient at extracting unauthorized funds from government agencies, the landlord has provided little evidence to demonstrate how the tenant's payment of additional rent to the landlord, requiring additional paperwork and approval from the Ministry, would be in any way advantageous to the tenant. The landlord's subsequent June 26, 2013 handwritten request for a further increase in rent to \$650.00 as of August 1, 2013, a further 14 % rent increase, lends credence to the tenant's lawyer's claim that the landlord has made a practice of ignoring the requirements of the *Act* with respect to obtaining rent increases from this tenant.

While the tenant's lawyer's requested monetary award did not specifically outline an amount for the landlord's alleged illegal rent increases, the tenant's application include a request to dispute what the tenant and his lawyer maintained was an additional rent increase unauthorized by the *Act* or the regulations. I find that the tenant's application is sufficiently broad to enable me to consider the issuance of a monetary award to the tenant for this item. Over the course of this tenancy, it would appear that the tenant made 10 payments of \$580.00 and 7 payments of \$570.00. These payments represent a total overpayment of \$1,290.00 (i.e. $10 \times \$80.00 + 7 \times \$70.00 = \$1,290.00$).

Despite the tenant's lawyer's claim that the tenant was a recent immigrant with limited English or awareness of his rights, I find that there was an element of acquiescence by the tenant to the increase in rent that took effect on March 1, 2012. Although I did not

find the landlord's evidence that the tenant requested the rent increase convincing, the tenant did obtain a shelter allowance from the Ministry for the increased rent and does not appear to have corrected the impression provided in the Shelter Information document supplied to the Ministry that this tenancy was to begin on March 1, 2012. I also question the delay in the tenant's application for a monetary award. He was clearly interacting with a series of advocates with respect to this tenancy and did not submit an application for a monetary award until after he received a 1 Month Notice from the landlord.

Under the above circumstances, I find that the tenant is only entitled to a monetary award for overpaid rent from March 1, 2012 until November 30, 2012, the anniversary date of his initial periodic tenancy. By December 1, 2012, I believe that the tenant had sufficient knowledge of the rental system in this province and realized that the landlord was acting outside the *Act* and the Agreement in seeking an increase in rent beyond the amount specified under the Agreement. As of December 1, 2012, I find that the tenant's correct rent was as paid to the landlord for all subsequent months until July 2013, when the tenant paid \$570.00. Thus, I find that the tenant is entitled to a retroactive reduction in rent paid during this tenancy of \$80.00 per month for each of the 9 months from March 1, 2012 until November 30, 2012. This monetary award in the tenant's favour totals \$720.00.

Based on the undisputed evidence before me, I find that the tenant has not paid his August 2013 monthly rent. As I find that rent remains owing to the landlord, I reduce the amount owed by the landlord to the tenant by \$500.00, the amount specified in the Agreement, to reflect the tenant's failure to pay rent for August 2013. I take this action using the offsetting provisions of section 72(2)(a) of the *Act*.

I make no order with respect to the tenant's security deposit as the tenancy has not yet ended, nor has the landlord's obligation to return the security deposit yet occurred.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective August 31, 2013. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to recover losses and damages arising out of this tenancy, less the amount of rent that remains owing for this tenancy:

Item	Amount
Landlord's Failure to Honour Commitment to Reimburse Tenant for Repairs	\$200.00
Tenant's Entitlement to Recovery of Overpaid Rent during this Tenancy (9 months @ \$80.00 per month = \$720.00)	720.00
Less Unpaid August 2013 Rent	-500.00
Total Monetary Order	\$420.00

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 09, 2013

Residential Tenancy Branch

