



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL, FF
CNL, DRI, MNDC

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession for landlord's use of property / and recovery of the filing fee; and ii) by the tenants for cancellation of a notice to end tenancy / to dispute an additional rent increase / and a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is located in the basement of a house. There is no written tenancy agreement in evidence for the tenancy which began in August 2010. At that time the landlord resided on the main floor of the house. When tenancy began, monthly of \$750.00 included utilities such as cable, internet, heat and electricity. Rent is due and payable on 15th day of each month. A security deposit of \$375.00 was collected. There is no move-in condition inspection report in evidence.

When the landlord moved from the house in October 2012, the cable and internet services provided to the tenants were no longer included in the rent. In the result, the parties negotiated a \$100.00 reduction in rent to \$650.00 per month.

However, in their application the tenants claim that their monthly costs for cable and internet are approximately \$150.00, such that the monthly cost of rent and these utilities is now effectively \$800.00 (\$650.00 + \$150.00). In the result, the tenants seek compensation for the \$50.00 difference per month between their current monthly costs and their monthly costs at the time when tenancy began (\$800.00 - \$750.00). While the

period of time in question is approximately 1 year, the tenants have limited their claim to \$200.00, or the equivalent of 4 months (4 x \$50.00).

Pursuant to section 49 of the Act which addresses **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated September 8, 2013. The notice was personally served on that same date. A copy of the notice was submitted in evidence, and the reason identified in support of its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The tenants filed an application to dispute the notice on September 10, 2013. During the hearing the tenants challenged the landlord's motives and intentions for issuing the notice. However, the landlord testified that his intention is to make the unit available to his daughter, and that this reason for ending the tenancy is consistent with the reason identified on the notice.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, I find that the landlord has established entitlement to an order of possession arising from issuance of the 2 month notice dated September 8, 2013. Accordingly, the tenants' application for cancellation of the notice is hereby dismissed, and I hereby issue an **order of possession** in favour of the landlord.

As the landlord has succeeded in obtaining an order of possession, I find that he has established entitlement to recovery of the \$50.00 filing fee. I hereby order that the landlord may withhold this amount from the security deposit at the end of tenancy.

Following from the issuance of this notice, the attention of the parties is drawn to section 51 of the Act which speaks to **Tenant's compensation: section 49 notice**. In part, this section provides that a tenant is "entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement." As noted during the hearing, in the circumstances of this dispute the tenants "may withhold the amount authorized from the last month's rent."

In relation to their application for compensation, the tenants refer to the provisions set out in section 27 of the Act which speaks to **Terminating or restricting services or facilities**, and provides in part as follows:

27(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that documentary evidence submitted by the tenants in support of their claim that cable and internet cost \$150.00 per month is inconclusive. However, in any event, there is little formal documentation related to this tenancy and I find that the \$100.00 reduction in rent agreed to by the parties when cable and internet services were no longer included in the rent, reflects a mutual agreement which was made in good faith. Accordingly, this aspect of the application is hereby dismissed.

As the end of tenancy nears, the attention of the parties is drawn to section 37 of the Act which speaks to **Leaving the rental unit at the end of a tenancy**:

37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Further, the attention of the parties is drawn to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

Conclusion

The tenants' application is hereby dismissed.

I hereby issue an **order of possession** in favour of the landlord effective not later than **Thursday, November 14, 2013**. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord may withhold **\$50.00** from the tenants' **security deposit** in order to recover the filing fee.

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: October 18, 2013

Residential Tenancy Branch

