



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, RP, LRE, RR

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on her door by the landlord on September 16, 2013. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on September 26, 2013. I am satisfied that the parties served one another with the above documents in accordance with the *Act*.

The landlord testified that he did not receive any written evidence from the tenant. The tenant testified that she sent copies of her written evidence to the Residential Tenancy Branch (the RTB), but did not send her evidence to the landlord. As the tenant did not serve her evidence to the landlord, I advised the parties that I could not take her written evidence into consideration in my decision. I have not considered her written evidence.

At the commencement of this hearing, the tenant testified that she was actively looking for alternate accommodations and was hoping to vacate the rental unit as soon as possible. As the landlord said that he wanted vacant possession of the rental unit and

the tenant was no longer seeking the cancellation of the landlord's 10 Day Notice, the parties discussed the timing of the end of this tenancy. The tenant testified that she was willing to end her tenancy by at least November 15, 2013. The landlord did not dispute this date to end this tenancy.

The remainder of the hearing addressed the other issues before me and the tenant's request for the issuance of a number of orders to clarify matters in dispute regarding the services provided by the landlord and her claim that the landlord had reduced the value of her tenancy.

Issues(s) to be Decided

Should this tenancy end by November 15, 2013? Is the tenant entitled to a monetary award for losses in the value of her tenancy or damages arising out of this tenancy? Should any other orders be issued with respect to this tenancy?

Background and Evidence

This periodic tenancy began on April 1, 2012. According to the Residential Tenancy Agreement (the Agreement), copies of which both parties had in their possession, monthly rent is set at \$650.00, payable in advance on the first of each month. The monthly rent was to have included a refrigerator, cable television and wireless internet. The landlord continues to hold the tenant's \$325.00 security deposit paid on April 7, 2012.

The tenant and her mother testified that the landlord increased the tenant's monthly rent to June 1, 2013 to \$700.00. The landlord did not dispute the tenant's sworn testimony that he did not follow any of the requirements of the *Act* or the *Regulations* to obtain this rent increase.

The landlord's 10 Day Notice of September 16, 2013 identified \$700.00 in unpaid rent owing. However, the tenant testified that she paid her September 2013 rent on September 1, 2013. The landlord testified that the tenant paid her September 2013 rent on September 7, 2013. Both parties confirmed that the landlord provided no receipt for the tenant's September 2013 rent payment.

The tenant testified that the landlord gave her an oral 1 Month Notice to end her tenancy for landlord's use of the property. The tenant testified that she had not paid rent for October 2013 because the landlord had asked her to vacate the rental unit to enable him to move a close family member into her rental suite. She maintained that the *Act* enabled her to forego paying her rent for the last month of her tenancy under these circumstances.

The tenant and her mother testified that the tenant's refrigerator was not operating properly within a couple months of her moving into the rental unit. The tenant testified that she advised the landlord of the problems she was having with the fridge many times and the landlord took little or no action to resolve this problem. On one occasion, the tenant testified that the landlord compensated her \$50.00 for her loss of food in her fridge and freezer which were spoiled by the malfunctioning of her fridge. This incident occurred in November 2012. The tenant and her mother testified that the ongoing problems with the tenant's fridge became so bad that the tenant's mother eventually had to purchase a used fridge herself to place in the rental unit in July 2013. The tenant asked for a reduction in her rent to take into account the landlord's failure to provide her with a properly functioning refrigerator.

The landlord said that he tried to get the existing fridge repaired a number of times, but the tenant was never home when the repair person called her. He provided no further details.

The tenant also asked for a retroactive rent reduction for the landlord's failure to provide her with cable television and wireless internet. She testified that the wireless internet did not work properly and the landlord eventually refused to give her the password to access the landlord's wireless internet connection. The tenant's mother gave similar testimony, noting that the tenant had to open her own account for telephone, cable and internet in February or March 2013, because the landlord refused to provide her with the access she was supposed to have to cable television and wireless internet as stated in the Agreement for this tenancy. The tenant's sister testified that the Agreement called for the landlord to provide basic cable and wireless internet. She said that the cable could not be connected even with a cable splitter. She said that her sister eventually had to open her own account with a cable company who provided phone, cable, internet and wireless internet for one price. There was initially a promotion whereby the above services were all included for \$60.90 for the first five month period until October 2103. As of October 1, 2013, the tenant was required to pay the regular price of \$120.00, which again included the telephone.

The tenant and her witnesses testified that the landlord refused to do any repairs or honour the commitments he made when the tenant entered into the Agreement with the landlord. The tenant said that the landlord was supposed to have painted walls, repaired a walkway and fixed damaged flooring. The tenant's mother testified that the landlord accessed the tenant's rental unit without the tenant's consent.

The tenant also gave undisputed sworn testimony that the landlord arbitrarily raised her rent from \$650.00 to \$700.00 on June 1, 2013, without going through any of the

procedures required to increase rent as set out in the *Act*. She asked for a retroactive rent reduction for this unauthorized rental increase.

Analysis

I first note that I find the landlord's sworn testimony and his 10 Day Notice most confusing. Although he maintained that rent was not paid on September 1, 2013, when it was due, it would appear that he agreed that the tenant's September rent had been paid in full by the time he issued the 10 Day Notice on September 16, 2013. I find that the 10 Day Notice is of no force or effect.

However, in accordance with the powers delegated to me under the *Act*, I do give legal effect to the agreement reached between the parties at this hearing to end this tenancy by mutual consent by 1:00 p.m. on November 15, 2013. I issue an Order of Possession to the landlord in case the tenant does not vacate the premises by that time and date.

Based on the evidence before me, I find that any oral agreement the parties may have had to end this tenancy for landlord use has no legal effect. Neither party in a tenancy can end a tenancy by way of an oral agreement. The *Act* requires that all notices to end tenancy must be in writing. In the case of a notice issued by a landlord, the landlord must use the correct RTB issued form for doing so. Furthermore, a valid Notice to End Tenancy for Landlord's Use of Property must use a 2 Month Notice form and cannot be a 1 Month Notice as claimed by the tenant. Since no valid 2 Month Notice to End Tenancy for Landlord's Use of Property was issued by the landlord, I find that the tenant is not entitled to any of the provisions of section 51 of the *Act*, which allow a tenant to forego paying rent at the end of a tenancy.

Section 32(1) of the *Act* places an obligation on a landlord to 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.

Section 65(1)(f) of the *Act* allows me to issue a monetary award to reduce past or future rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

In this case, I find that the landlord's failure to provide the tenant with a functioning refrigerator has reduced the value of her tenancy agreement. The landlord did not dispute the tenant's testimony that he did allow the tenant a one-time rent reduction of \$50.00 to partially compensate her for her loss of food in her refrigerator when it malfunctioned and spoiled her food. The tenant should not be required to replace a refrigerator that was to have been included in her Agreement as occurred with respect to this tenancy. I also find little merit to the landlord's claim that he has tried to repair the refrigerator and that the tenant is somehow responsible for failing to accommodate his requests for repair. Rather, I find that the value of the tenancy agreement has been devalued by the landlord's failure to conduct timely repairs.

As there is undisputed evidence that the landlord was clearly aware of the tenant's concerns about the landlord's refrigerator by at least November 2012, I order a retroactive reduction in the tenant's monthly rent in the amount of \$50.00 per month for the 11 ½ months from December 2012 until November 15, 2013. This results in a retroactive rent reduction of \$575.00 ($11.5 \times \$50.00 = \575.00) over this period.

I have also considered the tenant's claim that her tenancy has been devalued by the landlord's failure to abide by the terms of her Agreement and provide her with cable television, and wireless internet access. In this regard, I find that her evidence and the sworn testimony provided by her witnesses, particularly that provided by her sister, demonstrated that the landlord has withheld these services that were supposed to have been included in the tenant's monthly rent. The tenant had to open her own account with a cable company to obtain these services. I find that the tenant is entitled to a retroactive rent reduction for her demonstrated losses associated with the landlord's failure to provide her with these services.

I heard undisputed testimony that the tenant opened a new account with a cable company to provide her with telephone, cable television and wireless internet service. For the first five months of this service, she obtained the above services for a promotional rate of \$60.90 per month. As the landlord should not be held responsible for the telephone package that was included in this monthly rate, I deduct \$25.00 from the tenant's \$60.90 monthly charge for a five month period. This results in a retroactive rent reduction for the five-month period preceding October 2013 of a total of \$179.50 ($5 \times \$35.90 = \179.50). After October 1, 2013, the tenant became responsible for the regular monthly charge of \$120.00 for the above bundle of services from the cable company for October and November 2013. I allow the tenant a retroactive rent reduction of this amount less the estimated \$25.00 telephone charge. This results in a further retroactive rent reduction of \$190.00 ($2 \times \$95.00 = \190.00).

There is also undisputed evidence before me that the landlord illegally raised the tenant's rent from \$650.00 to \$700.00 as of June 1, 2013. I order that the correct monthly rent for this tenancy as of June 1, 2013 was \$650.00, subject to the reductions in rent noted above for services and facilities that were not provided by the landlord to the tenant. I issue a monetary award in the tenant's favour in the amount of \$200.00 ($4 \times \$50.00 = \200.00) for the landlord's illegal overcharge of rent from June 2013 until September 30, 2013, the last four months when the tenant has paid rent to the landlord.

There is undisputed evidence that the tenant did not pay any rent for October 2013. At the hearing, I instructed the tenant to refrain from paying any further rent to the landlord until such time as I had finalized my decision and determined the amounts owing between the parties for the remainder of this tenancy. Under these circumstances, I find that the landlord is entitled to \$325.00 in rent for November 2013, representing one-half of the correct monthly rent as set out in the Agreement. In accordance with section 72 of the *Act*, I order that the tenant's monetary award as set out above is be reduced by the amounts of unpaid rent owing to the landlord for October and November 2013 as outlined below.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on November 15, 2013. Should the tenant(s) 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 a monetary award for the loss in value of her tenancy agreement and for an illegal rent increase charged by the landlord, less offsetting amounts of rent that remain owing to the landlord for this tenancy:

Item	Amount
Reduction in Rent for Loss in Value of Tenancy Agreement for Refrigerator	\$575.00
Reduction in Rent for Loss in Value of Tenancy Agreement for Cable Television and Wireless Internet – Until October 1, 2013	179.50
Reduction in Rent for Loss in Value of Tenancy Agreement for Cable Television and Wireless Internet – From October 1, 2013	190.00

Monetary Award for Landlord's Charge of Increased Rent from June 1, 2013 until September 30, 2013	200.00
Less Unpaid October 2013 Rent	-650.00
Less Unpaid Rent – First Half of November 2013	-325.00
Total Monetary Order	\$169.50

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: November 05, 2013

Residential Tenancy Branch

