



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

DRI, MND, MNDC, MNR, MNSD, OPR, OPC, OPB, RP, LRE, LAT, RR, FF, O

Introduction

This hearing dealt with applications by both parties. The landlords applied for an order of possession based on a notice to end tenancy for unpaid rent and/or a notice to end tenancy for cause; a monetary order for unpaid rent, rental loss, and damage; and to recover their RTB filing fee. The tenants applied to dispute a rent increase; to cancel both notices to end tenancy; for a monetary order for money owed or compensation for damage or loss; for an order that the landlord comply with the Act, Regulation, or tenancy agreement; for an order that the landlord make repairs, for an order to suspend or set conditions on the landlord's right to enter the rental unit, for an order to authorize a tenant to change the locks to the rental unit, for an order to allow the tenant to reduce rent for repairs, services, or facilities agreed upon but not provided, and to recover their RTB filing fee.

Both the landlords and tenants participated in the teleconference hearing and gave affirmed evidence. Since the hearing schedule permits a maximum of one hour and forty-five minutes per hearing, there was insufficient time to hear evidence on all of these matters. The remaining unrelated disputes are dismissed with leave to reapply, if necessary. The following issues were addressed:

Issue(s) to be Decided

Should the notice to end tenancy for unpaid rent be cancelled?

Are the landlords entitled to a monetary order for unpaid rent?

Are the tenants entitled to a monetary order for any or all of the monetary claims made by the tenants?

Background and Evidence

Notice to End Tenancy for Unpaid Rent

The parties agree the tenancy started September 1, 2012 and was initially for a one-year fixed term ending August 31, 2013 (the "First Tenancy Agreement"). The First Tenancy Agreement obligated the tenants to pay \$1,400.00 rent per month in advance on the first day of the month. The First Tenancy Agreement was not put into evidence.

The landlord gave evidence that the First Tenancy Agreement required the tenants to vacate the rental unit on August 31, 2013. The tenants dispute that the First Tenancy Agreement required them to vacate the rental unit at the end of the fixed term. The tenants gave evidence that their understanding was that the tenancy would become a month-to-month tenancy at the end of the fixed term. The tenants' evidence is that they did not receive a copy of the First Tenancy Agreement.

The landlord gave evidence that she contacted the tenants at the end of August to propose they sign a new tenancy agreement. The landlord's evidence is that she told the tenants the new tenancy agreement would obligate the tenants to pay \$1,500.00 rent per month in advance on the first day of the month. The landlord's evidence is that the tenants did not take issue with the new amount of rent.

The landlord gave evidence that she contacted the tenants several times throughout September 2013 to arrange a new tenancy agreement, but the tenants did not respond. The landlord's evidence is that she went to the rental unit on October 15, 2013 and the female tenant opened the door. She said she gave the new five-page tenancy agreement (the "Second Tenancy Agreement") to the female tenant who looked at it, turned to the last page (which contains only the signature lines), and signed it. The landlord's evidence is that she was not in any rush and the tenant was well aware of what she was signing. The landlord's evidence is that the parties discussed the new amount of rent at the time.

The tenant gave evidence that she and the landlord did discuss a new tenancy agreement in August 2013, but she thought the landlord only wanted a new tenancy agreement for the security of having a fixed term lease. The tenant's evidence is that she offered to go to the landlords' home in September to pick up the new tenancy agreement but the landlord declined. The tenant's evidence is that the landlord came to her door on October 15, 2013 and told her she was going to the bank and required a verification for the bank that the rental unit was rented.

The tenant gave evidence that the landlord presented her with the signature page that is the fifth page of the Second Tenancy Agreement, but told her that the document was a bank verification. The tenant says she signed the signature page, but was not aware that the document she signed was the Second Tenancy Agreement. Her evidence is that she did not see the document the signature page was attached to. Her evidence is that she was not aware the landlord intended to raise the rent to \$1,500.00 in the Second Tenancy Agreement.

The parties agree that the landlord requested a signature from the male tenant as well on October 15, 2013, but he was not available. The parties also agree that the landlord provided a copy of the Second Tenancy Agreement to the tenants on October 31, 2013. The Second Tenancy Agreement was put into evidence, and it specifies the amount of rent is \$1,500.00.

The tenants provided a copy of a handwritten note to the tenants dated October 28, 2013 in which the landlord wrote "[Male tenant name], I will stop by on Wednesday October 30/13 at 2:45 pm to get you to sign the lease." The tenants provided a copy of an email dated October 28, 2013 from the tenants to the landlords which states in part: "This is to confirm that [male landlord] is coming to do an inspection of the total house on Thursday @ 1 pm, if he can bring the new lease and a copy for us, or it can be emailed that would be great. .."

The landlord gave evidence that the tenants paid \$1,400.00 in rent for each of December 2013, January 2014, and February 2014.

The landlord gave evidence that she served the tenants with a Notice to End Tenancy for Unpaid Rent (the "Notice") by personal service on February 4, 2014. The Notice states the tenants failed to pay \$300.00 in rent that was due on December 1, 2013, January 1, 2014, and February 1, 2014. The landlord's evidence is that the tenants also paid only \$1,400.00 rent for March 2014. The landlords seek an order of possession and a monetary order for unpaid rent.

Landlords' Request for an Order of Possession

The landlords request an order of possession. They agree to an effective date of March 31, 2014 at 1 p.m. to allow the tenants time to move. The tenants agree to allow the landlords to show the rental unit to prospective new tenants upon 24 hours notice, which notice is to be given by telephoning the female tenant's cell phone.

Tenants' Monetary Claims

Yard clean-up: The tenants gave evidence that they incurred a loss of \$70.00 for cleaning up the yard. The tenant's evidence is that the landlord left two truckloads of branches from a yard clean-up in a pit in the yard, and told the tenants' son to burn it. The tenants instead went to Kitimat and borrowed a truck from a relative, removed the branches to a landfill, then returned the truck to Kitimat. The tenant's evidence is that the cost of gas for the truck was \$70.00.

The landlord's position is that they did not request that the tenants remove the branches and are not obligated to reimburse the tenants for gas.

Landlord's camper: The tenants claim compensation of \$100.00 per month for each of November 2013, December 2013, January 2014, February 2014, and March 2014 for storage of the landlord's camper on the property.

The landlord gave evidence that he told the female tenant in October 2013 that he wished to store his camper in the yard. The landlord's evidence is that the female tenant said she would speak to the male tenant and let the landlord know. The landlord's evidence is that he did not hear back from the female tenant but assumed it was OK to store the camper. His evidence is that the yard is about 9000 square feet and the camper was not in the tenants' way.

The tenants' evidence is that the landlord told the tenants he was putting the camper there, and did not seek their permission. The tenant gave evidence that the commercial rate for storing a camper is about \$100.00 per month.

Rent reduction: The tenants claim \$50.00 per month rent reduction for most of the tenancy because the downstairs bathroom was not useable. The tenants' evidence is that the shower in the downstairs bathroom leaked prior to the start of the tenancy, and the landlords promised to repair it. The tenants' evidence is that the landlords did not complete the work until February 2014.

The landlord gave evidence that he sought the tenants' permission on numerous occasions to enter the rental unit to complete the renovation of the downstairs bathroom, however the tenants frequently denied him access. The landlord provided copies of several emails and notes which support the landlord's assertions that the landlords attempted to schedule various times to work on the bathroom and were put off by the tenants. The landlord's evidence is that the bathroom would have been completed by October 1, 2012 if the tenants had provided access to the rental unit.

Analysis

The parties disagree about whether the female tenant knowingly signed the Second Tenancy Agreement. I accept the evidence of the landlord over that of the tenant on this point, on the basis that it is unlikely the female tenant signed the signature page of a document without looking at the document attached to the signature page. Further, I find it is unlikely that the landlord handed the Second Tenancy Agreement to the tenant without the landlord noting that the Second Tenancy Agreement obligated the tenants to pay more rent than they had under the First Tenancy Agreement. The landlord's note dated October 28, 2013 also supports the landlord's contention that the female tenant had signed the Second Tenancy Agreement by that point but the male tenant had not.

I find that the female tenant signed the Second Tenancy Agreement, that the female tenant understood that she was signing the Second Tenancy Agreement, and that the tenants agreed to pay rent of \$1,500.00 per month effective December 1, 2013. I find the tenants failed to pay \$100.00 rent that was due in each of December 2013, January 2014, and February 2014. I find the tenants received the Notice on February 4, 2014 and did not pay the rent owing within five days of receiving the Notice. I find the tenants have not provided evidence of a valid reason for not paying the full rent. For that reason, I dismiss the tenants' application to cancel the Notice. I also dismiss the tenants' application to dispute an additional rent increase, since I find there was a fresh tenancy agreement rather than any rent increase within an existing tenancy agreement.

I grant the landlord an order of possession which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I find the landlords are due \$400.00 in unpaid rent from the tenants for the months of December 2013, January 2014, February 2014, and March 2014.

I dismiss the tenants' claim for \$70.00 in reimbursement for gas money to dispose of two truckloads of branches from the yard, on the basis that there was no agreement between the parties that the tenants would do that work or be reimbursed for their costs in doing the work.

I accept the evidence of both the landlords and the tenants that the landlords did not have the explicit consent of the tenants to store a camper belonging to the landlords in the rental unit yard. A tenancy agreement entitles the tenants to exclusive possession of the home and yard, and the landlords do not have a right to use any area for storage

absent the explicit agreement of the tenants. I accept the tenant's evidence that the commercial rate for storing a camper is about \$100.00 per month. I award the tenants \$500.00 as compensation for the landlords' storage of a camper in the rental unit yard for a period of five months, from approximately November 1, 2013 until March 31, 2014.

I allow the tenants' claim for a \$50.00 rent reduction to compensate them for not having use of the downstairs bathroom for the month of September 2012. I accept the evidence of the landlords that the landlords made frequent attempts to gain access to the rental unit to complete the renovation of the downstairs bathroom, but were denied access by the tenants. For that reason, I find that the tenants are not entitled to compensation for the period of time after October 1, 2012 that the bathroom was incomplete.

I have awarded the landlords \$400.00 for unpaid rent and I have awarded the tenants \$550.00 as compensation for storage of the camper and for not having use of the downstairs bathroom for one month. I set these awards off against each other and I grant the tenants a monetary order for \$150.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Since each of the parties has had some success in their applications, I do not make any award regarding the RTB filing fee of either party.

Claims not dealt with

After hearing evidence regarding the Notice, I advised the parties that I would not cancel the Notice and so the tenancy was coming to an end. For that reason, and because there was insufficient time at the hearing, I did not hear evidence regarding the Notice to End Tenancy for Cause (the "Cause Notice"). Should my decision regarding the Notice not be upheld, the tenants have leave to dispute the Cause Notice.

On the basis that I uphold the Notice and the tenancy is coming to an end, I only heard those of the tenants' claims that dealt with money. I did not hear evidence on the tenants' applications for an order that the landlords comply with the Act, Regulation, or tenancy agreement, for an order that the landlords make repairs, for an order to suspend or set conditions on the landlord's right to enter the rental unit, or for an order to authorize the tenants to change locks to the rental unit. Should my decision not be upheld so that the tenancy continues, the tenants have leave to reapply for the above-noted claims.

The landlords indicated in the Landlord's Application for Dispute Resolution that they seek a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement. There was insufficient time to deal with these unrelated disputes, and the landlords have leave to reapply for these claims.

Conclusion

I dismiss the tenants' application to cancel the Notice. I grant the landlords an order of possession. I grant the tenants a monetary order for \$150.00.

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: March 21, 2014

Residential Tenancy Branch

