



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, CNC, OPR, MND, MNR, MNSD, MNDC, and FF

Introduction

This decision and one of the associated Orders were amended on April 07, 2014 after the Landlord filed a Request for Correction, which made me aware of an inadvertent mathematical error. For clarity, all amendments have been underlined and highlighted by bold lettering.

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that on January 27, 2014 the Tenant's Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Cause, an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for damage to the rental unit, a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that on February 13, 2014 the Landlord's Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were sent to the Tenant at the rental unit, via registered mail. The Tenant acknowledged receipt of these documents, although she believes she received them in two separate packages. As the Tenant acknowledged receipt of the Landlord's evidence, it was accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. I note that although all

evidence provided in this matter has been considered, only testimony or documents that are relevant to my decision have been referenced in this decision.

Preliminary Matters

The Landlord and the Tenant agree that this rental unit is on Pacific Street, rather than Pacific Avenue, and that address is recorded on this decision and Orders.

The Landlord and the Tenant agree that the Landlord did not serve the Tenant with a Ten Day Notice to End Tenancy and therefore I am unable to consider the Landlord's application for an Order of Possession pursuant to section 46 of the *Residential Tenancy Act (Act)*.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for Cause, pursuant to section 47 of the *Act*, or should the Notice to End Tenancy be for Cause be set aside?

Is the Landlord entitled to compensation for unpaid rent/lost revenue, for a strata fine, and for costs to repair the fire alarm?

Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into the rental unit on September 27, 2013; that the Tenant agreed to pay monthly rent of \$1,450.00 by the first day of each month; and that the Tenant paid a security deposit of \$725.00.

The Landlord and the Tenant agree that on January 17, 2014 the Landlord personally served the Tenant with a One Month Notice to End Tenancy for Cause, which declared that the Tenant must vacate the rental unit by February 17, 2014.

The One Month Notice to End Tenancy for Cause indicates that the Landlord wishes to end the tenancy because the tenant was repeatedly late paying rent; the tenant or a person permitted on the property has significantly interfered with or unreasonably disturbed another occupant or the landlord; the tenant or a person permitted on the property has put the landlord's property at significant risk; the tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property; and the 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.

The Landlord stated that the cheque the Tenant tendered for rent for October of 2013 was not honoured by the Tenant's financial institution. He stated that the Tenant subsequently paid the rent for October on October 08, 2013.

The Tenant stated that on September 29, 2013 or September 30, 2013 she informed the Landlord's wife that she had closed the account her October rent cheque was written on and that she could not pay her rent for 5 or 7 days. She stated that the Landlord's wife told her the delay was acceptable. The Landlord stated that he has a vague memory of this conversation but that neither he, nor his wife, agreed that rent was not due on October 01, 2013.

The Landlord stated that the cheque the Tenant tendered for rent for November of 2013 was not honoured by the Tenant's financial institution. He stated that the Tenant paid the rent for November on November 22, 2013. The Tenant stated that she paid her rent for November sometime in the latter part of that month.

The Tenant stated that the Landlord should have been aware that the November rent cheque would not be honoured, as she had previously told the Landlord's wife that she had closed that account. She stated that on November 02, 2013 or November 03, 2013 she contacted the Landlord and asked him how he wanted the rent paid; that he told her he would "get back to her"; and that he did not inform her how to pay the rent until much later in the month. The Landlord stated that the Tenant did not ask him how the rent should be paid at the beginning of November and that there was simply a delay in paying the rent.

The Landlord and the Tenant agree that the Tenant did not pay rent for January until January 11, 2014. The Tenant stated that she was away from home on January 01, 2014; that she had arranged to have a friend deposit her paycheque while she was away; that the friend did not deposit her paycheque; and that she was, therefore, unable to pay her rent when it was due on January 01, 2014.

The Tenant stated that she emailed the Landlord's wife on January 01, 2014 and told her she could not pay her rent until she returned home and the wife told her it was "okay" and to pay it as soon as possible. The Landlord stated that he and his wife share the same email account and this email was not received.

The Landlord and the Tenant agree that the Tenant did not pay rent for February. The Tenant stated that her rent for February was paid by email and that the payment was not accepted by the Landlord. The Landlord stated that the Landlord did not receive an email payment for the Tenant for rent for February of 2014.

The Landlord and the Tenant agree that the Tenant has not paid rent for March of 2014.

The Landlord is seeking a monetary Order for unpaid rent from February and March of 2014.

The Landlord and the Tenant agree that on December 22, 2013 there was a domestic dispute in the lobby of the building between the Tenant and her boyfriend. The Tenant stated that she was very frightened as a result of this dispute and that her voice was

very loud when she told the security guard that she did not want her boyfriend to be permitted back into the building.

The Landlord and the Tenant agree that on December 29, 2013 the Tenant and her boyfriend were having another loud dispute; that at one point in the dispute the Tenant was inside her rental unit yelling at her boyfriend to let her out of the unit; that her boyfriend was outside the rental unit holding the door closed; that when the security guard arrived the boyfriend left the area; that the Tenant followed her boyfriend.

The Tenant stated that she was very upset after this incident; that the security guard was "yelling" at her to be quiet; and that she yelled at the guard that the guard should be following her boyfriend.

The Landlord stated that several occupants of the residential complex complained about this disturbance and that the strata council fined him \$200.00 for a contravention of the strata bylaw relating to unreasonable noise. The Landlord is seeking compensation for this fine.

The Landlord submitted a letter from the Strata Council, dated January 14, 2014, which quotes the strata bylaw and informs the Landlord that the Landlord is being fined \$200.00 for the disturbance on December 29, 2013.

The Tenant stated that she believes she should pay this fine, as she understood she was obligated to comply with the bylaws of the residential complex, which included not causing a disturbance.

The Landlord is claiming compensation for repairing the fire alarm, in the amount of \$545.74.

The Landlord stated that on December 27, 2013 the Tenant cut a wire in the fire alarm speaker in her rental unit; that the cut wire deactivated the fire alarm control panel for the sixth floor of the residential complex; and that after much investigation the cut wire in the rental unit was located. The Landlord stated that the strata council has charged him for the cost of the repair, in the amount of \$545.74.

The Tenant stated that she did not cut a wire in her fire alarm speaker nor did she tamper with the speaker. She stated that on December 24, 2013 technicians did identify and fix a problem with her speaker.

The Landlord submitted a letter from the strata council, dated December 31, 2013, in which the writer informs the Landlord that the Tenant "cut" the speaker to the fire alarm in her rental unit.

The Landlord submitted an email, dated December 27, 2013, to the author of the letter from the strata council, dated December 31, 2013, in which the writer informs the author that the technicians found a "disconnected" speaker inside the rental unit.

The Landlord submitted an invoice from a fire alarm company, dated December 30, 2013. The invoice does not specify the source of the problem with the fire alarm system, although it appears that a third party has made a notation on the invoice that the wires to the fire speaker were disconnected by the Tenant.

The Landlord submitted an email from the representative of the fire alarm company, dated January 31, 2014. The author of the email declared that the technicians located a disconnected speaker wire in the rental unit. The Landlord has written on the email that the "cut speaker wire deactivates the fire alarm for the entire 6th floor...".

Analysis

Section 47 of the *Act* authorizes a landlord to end a tenancy for a variety of reasons. On the basis of the undisputed evidence, I find that on January 17, 2014 the Tenant received a One Month Notice to End Tenancy for Cause, which has a declared effective date of February 17, 2014.

Section 47(2) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Tenant received this Notice on January 17, 2014 and rent is due by the first of each month, the earliest effective date that the Notice was February 28, 2014.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was February 28, 2014.

The One Month Notice to End Tenancy declares that the Landlord wishes to end the tenancy for a variety of reasons. The Landlord only needs to prove one of the reasons cited. Section 47(1)(b) of the *Act* authorizes a landlord to end a tenancy if the tenant is repeatedly late paying rent, which is one of the reasons the Landlord wishes to end this tenancy.

On the basis of the undisputed evidence, I find that rent was due by the first day of each month and that rent was not paid until October 08, 2013. I therefore find that the Tenant did not pay her rent when it was due on October 01, 2013.

In reaching this conclusion I have placed little weight on the Tenant's testimony that she told the Landlord's wife the rent was going to be late and the wife told her the delay was fine. Even if I were to fully accept the Tenant's testimony in regards to this conversation, I cannot conclude that this constituted an agreement that rent was not due on October 01, 2013. In my view this conversation simply served to inform the Landlord when the rent would be paid and was not an agreement by the Landlord that the rent could be paid late.

In reaching this conclusion I was heavily influenced by the Landlord's testimony that neither he nor his wife agreed that rent could be paid late. When a tenant alleges there has been an agreement to amend the term of a tenancy agreement, such as the date rent is due, the burden of proving that the parties agreed to alter the due date rests with the tenant. I find that the Tenant has submitted insufficient evidence to show that the Landlord agreed to alter the date rent is due.

On the basis of the undisputed evidence, I find that rent for November was not paid until the latter part of November of 2013. I therefore find that the Tenant did not pay her rent when it was due on November 01, 2013.

In reaching this conclusion I have placed no weight on the Tenant's testimony that she spoke with the Landlord on November 02, 2013 or November 03, 2013 in an attempt to ascertain how to pay the rent and he did not tell her how he wanted to be paid. I find, on the balance of probabilities, that this conversation did not occur.

In reaching this conclusion I was influenced, to some degree, by the Landlord's testimony that this conversation did not occur. I was also influenced by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, in which the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

Given that landlords are typically very motivated to collect rent, I find the version of events provided by the Tenant to be highly unlikely. I find it far more likely that the Tenant simply did not have the money to pay the rent and she therefore delayed paying the rent until she had the funds.

Even if I did accept the Tenant's testimony that she spoke with the Landlord on November 02, 2013 or November 03, 2013, to determine how rent should be paid, I find that this alleged attempt to pay the rent was made after rent was due. When a tenant provides a landlord with post dated rent cheques and then the tenant closes the account those cheques were written on, the tenant has an obligation to make a meaningful effort to ensure the landlord is paid when it is due. In these circumstances the Tenant had a full month to provide the Landlord with a different cheque or money order for rent for November; to arrange for some form of electronic payment, or to arrange to pay rent in cash. In my view the Tenant made no attempt to pay the rent on time in November of 2013.

On the basis of the undisputed evidence, I find that rent for January was not paid until January 11, 2014. I therefore find that the Tenant did not pay her rent when it was due on January 01, 2014.

I find that the Tenant has submitted insufficient evidence to show that the Landlord or his wife gave her permission to pay her rent late in January. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a copy of the email, that corroborates the Tenant's testimony that the Landlord's wife told her it was acceptable to pay the rent late or that refutes the Landlord's testimony that this email was not received wife, with whom he shares an email account.

Even if I accepted that the Tenant did send an email on January 01, 2014, I would conclude that the email simply served to inform the Landlord when the rent would be paid and was not an agreement by the Landlord that the rent could be paid late.

I find that the Tenant has submitted insufficient evidence to show that she sent the Landlord an electronic rent payment for February of 2014. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a copy of the electronic payment that corroborates the Tenant's testimony that the payment was made or that that refutes the Landlord's testimony that the payment was not received.

As it is extremely difficult to "prove a negative", the onus of proving the rent was proffered for February rests with the Tenant. I find that the Tenant has failed to establish that this payment was made and I therefore find that rent was not paid when it was due on February 01, 2014.

On the basis of the undisputed evidence, I find that rent has not yet been paid for February or March of 2014.

Residential Tenancy Branch Guidelines suggest that three late payments are the minimum number sufficient to justify a notice under these provisions. I concur with this guideline. As I have determined that the Tenant had not paid rent on three occasions prior to the Landlord serving the Tenant with a One Month Notice to End Tenancy, I find that the Landlord has grounds to end this tenancy pursuant to section 47(1)(b) of the *Act*.

In determining that three late payments are sufficient to end this tenancy in these circumstances I was influenced, to some degree, by the fact that the Tenant continued to pay her rent late, or not at all, after she was served with the Notice to End Tenancy and that she has only paid her rent on time on one occasion since this tenancy began. I find that this behaviour strongly supports the Landlord's right to end this tenancy.

Residential Tenancy Branch Guidelines stipulate that in exceptional circumstances, I should consider whether an unforeseeable bank error has contributed to a late payment

of rent. I do not find exceptional circumstances have contributed to the late payment of rent.

I find that the late payment in October allegedly related to the Tenant's decision to close her bank account and that she should have arranged to pay her rent on time, either by cash or money order. I find that the late payment in January allegedly related to a friend's failure to deposit her paycheque and that she should have solicited the help of a more reliable friend or immediately solicited the help of another individual once she determined that her paycheque had not been deposited.

As the Landlord has established grounds for ending this tenancy in accordance with section 47(1)(b) of the *Act* and the Tenant has been served with a valid One Month Notice to End Tenancy, I dismiss the Tenant's application to set aside the Notice to End Tenancy and I grant the Landlord an Order of Possession.

Section 26 of the *Act* requires a tenant to pay rent when it is due. I therefore find that the Tenant must pay the rent that was due on February 01, 2014, in the amount of \$1,450.00. As the Tenant opted to dispute the Notice to End Tenancy and not vacate the rental unit by February 28, 2014, I find that she must also pay rent for March of 2014, in the amount of \$1,450.00.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim.

On the basis of the undisputed evidence, I find that on December 29, 2013 the Tenant and her boyfriend were involved in a loud dispute, which disturbed other occupants of the rental unit and resulted in the security guard attending the area. I do not find it necessary to determine whether the Tenant or her boyfriend initiated the dispute, as the Tenant is responsible for the behaviour of her guests.

On the basis of the letter submitted in evidence, dated December 31, 2013, I find that the disturbance violated a strata corporation bylaw. As the Tenant acknowledged the disturbance and that she is obligated to comply with the strata corporation bylaws regarding unreasonable disturbances, I find that the Tenant must compensate the Landlord for the \$200.00 fine that has been levied for that violation.

I find that the Landlord submitted insufficient evidence to establish that the Tenant cut or tampered with a wire in the fire alarm speaker in her rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the Tenant cut the speaker wire or that refutes the Tenant's testimony that she did not tamper with the fire alarm speaker.

In determining this matter I have placed limited weight on the letter from the strata council, dated December 31, 2013, as there is no evidence that the author of the letter has personal knowledge that the speaker wire in the fire alarm speaker was "cut". My concern about the accuracy of the letter from the strata council is influenced, in part, by

the fact that on December 27, 2013 the author of the letter was informed, via email, that the speaker was “disconnected”. I find there is a significant difference between a speaker that is “disconnected” and a wire that has been “cut”, and it is not clear to me how the author of the letter arrived at her conclusion.

In determining this matter I have placed little weight on the invoice from the fire alarm company that repaired the fire alarm system, as the technician does not specify the nature of the problem. I find that the notation added by the third party is of little evidentiary value, as there is nothing to indicate that the notation is anything more than mere speculation.

In determining this matter I have placed limited weight on the email from the representative of the fire alarm company that repaired the fire alarm system, as the author simply declares that the technician found a “disconnected” wire. I find that the note added by the Landlord is of little evidentiary value, as there is nothing to indicate that the note is based on direct evidence.

After considering all of the documentary evidence in regards to the fire alarm speaker, I find that the Landlord has merely established that the problem with the fire alarm system was the result of a disconnected wire in the fire alarm speaker in the rental unit. I find that there is insufficient evidence to show the wire was “cut”.

In the absence of evidence to show that the fire alarm speaker wire was cut or deliberately disconnected by the Tenant, I find that the Landlord has failed to establish that the Tenant is responsible for repairing the problem with the fire alarm system. In reaching this conclusion I was influenced by the possibility that the wire could have been become loose because it was inadvertently knocked or because it was improperly installed in the first instance. As the Landlord has failed to establish that the Tenant disconnected the wire, I find that the Tenant is not obligated to pay for the repair.

I should note that my decision in regard to the fire alarm system was influenced, in part, by the lack of a reasonable explanation for the Tenant purposely disconnecting the fire alarm. In the absence of any reasonable explanation, I find it entirely possible that the wire simply became loose over time.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to \$50.00 in compensation for the fee paid to file the Landlord's Application for Dispute Resolution.

I find that the Tenant's Application for Dispute Resolution is without merit and I dismiss the Tenant's application to recover the fee for filing an Application for Dispute Resolution.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective on March 31, 2014. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I also grant the Landlord a monetary Order in the amount of \$3,150.00, which is comprised of ~~\$1,900.00~~ **\$2,900.00** in unpaid rent, \$200.00 for the fine that was levied, and \$50.00 in as compensation for the fee paid to file this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$725.00 in partial satisfaction of this monetary claim.

On the basis of these calculations, I grant the Landlord a monetary Order in the amount of ~~\$1,425.00~~ **\$2,425.00**. In the event that the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court, and enforced as an Order 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: March 14, 2014

Amended: April 07, 2014

Residential Tenancy Branch

