



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNSD, FF, CNC, OLC, OPT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants applied 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an Order of Possession of the rental unit pursuant to section 54; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants confirmed that the landlord handed them the 1 Month Notice on March 27, 2014. They also confirmed that the landlord handed them copies of her dispute resolution hearing package on April 1, 2014. The landlord confirmed that she received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on April 7, 2014. Both parties confirmed that they received one another's written evidence. I am satisfied that the parties served the above documents to one another in accordance with the *Act*.

At the commencement of the hearing and after explaining the process we would be following during this hearing, the landlord described her application for a monetary award as a request for damage that may have arisen during this tenancy, as well as authorization to retain the tenants' security deposit in the event that damage has occurred. I noted that as the landlord has no evidence of damage, has not incurred expenses to repair damage and the tenancy is still in effect, there was no need to consider the landlord's application for a monetary award during this hearing. I dismiss these aspects of the landlord's application for a monetary award with leave to reapply after this tenancy ends.

Although additional notices to end tenancy for unpaid rent have been issued to the tenants, neither party applied to cancel any of these notices which are not before me for the purposes of this hearing. The male tenant gave undisputed sworn testimony that all monthly rent currently owing has been paid for this tenancy.

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? Are the tenants entitled to a monetary award for damages or losses arising out of this tenancy? Should any other orders be issued with respect to this tenancy? Are either of the parties entitled to recover their filing fees for their applications from one another?

Background and Evidence

While I have turned my mind to all the documentary evidence, including receipts, invoices, bank statements, miscellaneous letters, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

The landlord testified that this tenancy started when the tenants moved into the rental unit on July 11, 2013, four days before the scheduled commencement date for this tenancy. The female tenant (the tenant) testified that the tenants took occupancy of the rental unit on July 14, 2013.

According to the terms of the Residential Tenancy Agreement (the Agreement) monthly rent was set at \$1,400.00, payable in advance on the 31st of each month. This portion of the Agreement stated that "The tenant will pay the rent of \$1,400 each month to the landlord on the first day of the rental period which falls due on the 31st day of each month..." However, the parties also signed an Addendum (the Addendum), which established the following payment terms for this tenancy:

...Tenant will pay rent every two weeks (\$700) on the 15th and 30th/31st of each month (so rent will be paid up to date for the 15th of each month).

In their written evidence, the tenants noted that the Agreement did not state that rent was to be paid bi-monthly, but monthly. They maintained that the Addendum created by the landlord allowed the tenants to pay their monthly rent in two installments and that this monthly rent would not be considered late until the 16th day of each month. At the hearing, the tenants testified that this requirement to pay their monthly rent in full by the 15th of each month was partially as a result of the formal commencement of the tenancy on the 15th of July 2013, and partially to accommodate the male tenant's pay schedule, which provided him with funds every two weeks.

The landlord entered into written evidence a copy of the 1 Month Notice, requiring the tenants to end this tenancy by April 30, 2014. In that Notice, the landlord cited the following reason for the issuance of the Notice:

Tenant is repeatedly late paying rent.

At this hearing, neither tenant denied the landlord's allegation that the tenants were late on occasion in their payment of the remainder of their monthly rent by the 15th of each month. However, they maintained that they were actually ahead in their payments of rent from the beginning of this tenancy.

The landlord testified that the tenants paid \$350.00 of their \$700.00 security deposit on June 19, 2013 and the remaining \$350.00 of this deposit on June 26, 2013. She testified that she only agreed to allow the tenants to give the tenants the keys to allow them to move into the rental unit early and conduct some painting on the provision that they would pay her one-half month's rent of \$700.00 beforehand. She testified that the tenants paid her \$700.00 on July 11, 2013, at which time she allowed the tenants to access the rental unit.

The tenant entered written evidence, supported by her sworn testimony, that in addition to the above-noted payments she also paid the landlord \$700.00 in cash "a week – approximately July 2, 2013 or so after the landlord received the damage deposit." In her written evidence, the tenant maintained that she never received a rent receipt for this first instalment of the tenants' rent. She noted that after receiving a 10 Day Notice to End Tenancy for Unpaid Rent (a 10 Day Notice) on August 15, 2013, the tenants realized that the landlord had not acknowledged receiving the initial cash payment of \$700.00. The tenants' written evidence described this situation as follows:

...As a family, we decided to just let it go as there was no way of proving I paid the funds to her as they were in cash and to move would cost significantly more

than \$700.00. I paid the \$700.00 funds she was demanding on or about August 19, 2013...

The tenants also maintained that the female tenant inadvertently made two \$700.00 rent payments in mid-February 2014. In this regard, the tenants cited two rent receipts issued by the landlord in mid-February 2014. One of these rent receipts from the landlord was dated February 19, 2014, which stated it was for a \$500 cheque and \$200 cash. The second rent receipt of February 2014 was for “rent” but showed no payment amount. The landlord maintained that she initially planned to issue separate receipts for the tenants’ payments of rent due on February 15, 2014, the first of which was a \$500.00 cheque provided by the male tenant. While this receipt is at odds with the remaining record of receipts provided by the landlord, it does appear to align with a February 16, 2014 note from the male tenant to the landlord which read as follows:

Here is a cheque for \$500.00. The remainder will be in your hands in a few days.

The landlord submitted copies of an extensive series of receipts she issued for this tenancy. She testified that she always issued receipts for cash payments and gave sworn testimony denying any receipt of a cash payment from the tenants for rent prior to her handing them the keys at the beginning of this tenancy. She said that she also issued receipts for the tenants’ payment of rent by cheques after the tenants repeatedly questioned the amount of rent owing for this tenancy.

The tenant testified that the tenants’ application for a monetary award of \$1,400.00 sought a monetary award for the landlord’s repeated issuance of 10 Day Notices, which the tenants considered unwarranted and based on the landlord’s incorrect interpretation of the Addendum and the Agreement. She described the monetary portion of the tenants’ application as a request for compensation for the “harassment” the landlord had directed at the tenants.

Analysis

Section 47(1)(b) of the *Act* allows a landlord to end a tenancy for cause if the tenants are repeatedly late paying rent. In considering the landlord’s application to end this tenancy for the late payment of rent, I have given regard to Residential Tenancy Branch Policy Guideline 38. This Guideline establishes that “three late payments are the minimum number sufficient to justify a notice under these provisions.” This Guideline also notes that “it does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.”

I first note that much of the evidence before me pertains to whether monthly rent was actually due in full on the 15th of each month as set out in the Addendum, or whether the wording of the Agreement also allowed the landlord to issue 10 Day Notices if rent were not paid by the last day of each month. The tenants attached considerable importance to the timing of the 10 Day Notices, noting that the landlord had issued 10 Day Notices using both the middle and end of each month as the dates when rents were due. They also maintained in their written evidence that the landlord was somehow prevented from issuing a 1 Month Notice at the end of the month, as they asserted that rent had to be paid in full by the 15th of each month.

As noted at the hearing, the issue before me is whether the tenants were late in paying their rent on at least three occasions during this tenancy. The landlord's frequent issuance of 10 Day Notices to the tenants on the 16th of some of the months lends support to the expectation that monthly rent would be paid in full by the 15th of each month (e.g., August 2013, December 2013 and February 2014). However, the issuance of notices on these dates do not on their own establish when payments were due and owing or if they were paid by those dates. The tenants are also correct in that the landlord issued 10 Day Notices on other dates as well. I also noted at the hearing that a landlord is in no way required to time her 1 Month Notice to coincide with the timing of when monthly rent was due. Rather and as outlined above, the landlord only needs to demonstrate that the tenants were late in paying their rent on three occasions.

Before I can make a decision on whether rent was late, I first need to determine when the tenants' monthly rent payments were due. In this regard and as outlined above, I find that the provisions in the Agreement are clearly at odds with the provisions in the Addendum to that Agreement.

When there is ambiguity in the terms of a contract between parties, the legal principle of "*contra proferentem*" is often relied on to interpret the terms. This is a rule courts use when interpreting contracts. In plain English, it means that if there is an ambiguous clause in a contract it will be interpreted against the party responsible for drafting the clause. While the tenants requested the opportunity to pay their monthly rent in two equal installments, the tenants gave undisputed sworn testimony that it was the landlord who drafted the Addendum. As such and as I find that there is ambiguity in the payment terms of the Agreement and the Addendum, I find that the contract between the parties is to be interpreted in the way most favourable to the interests of the tenants. In this case, this leads to my finding that the full monthly rent was due by the 15th of each month. In coming to this determination, I also note that both parties gave sworn oral testimony that they understood the terms of the Agreement and the Addendum to mean that the tenants were responsible for paying all of their monthly rent by the 15th of each month.

Based on the above determination, I find that the landlord bears the burden of proving that the tenants paid their monthly rent on at least three occasions after the 15th of each month. In this regard, I have given particular consideration to the rent that became owing in full by the 15th of the following months:

- August 2013
- November 2013
- December 2013
- February 2014

The landlord supplied copies of rent receipts, some documents provided by the tenant(s), cheques from the tenant(s) and 10 Day Notices issued immediately following the middle of most if not all of the above months.

The landlord entered into written evidence a copy of her August 19, 2013 receipt for \$700.00 in rent that she testified was paid that day to cover the period from August 15, 2013 until August 30, 2013.

As was noted above, the tenants' own written evidence confirmed that they did not make this \$700.00 payment to the landlord until August 19, 2013. I have given regard to the tenant's claim that she made a cash payment of \$700.00 before this tenancy began during the first week of July 2013. However, as was noted in the tenants' own written evidence, the tenants recognized that "there was no way of proving" they made this cash payment to the landlord. When cash payments are made to a landlord, it is very important to ensure that a receipt is provided at that time. In the absence of a receipt to demonstrate this payment and in the absence of any other convincing written evidence, I find on a balance of probabilities it more likely than not that the tenants did not pay their rent that became due on August 15, 2013, until August 19, 2013, the date when both parties acknowledged a payment of \$700.00 was made to the landlord.

The tenants did not dispute the landlords' claim that they were late in paying their rent due on November 15, 2013. The landlord entered into written evidence a copy of a November 25, 2013 receipt for use and occupancy only for the tenants' payment of \$500.00 cash on November 21, 2013 and the remaining \$200.00 on November 25, 2013. The landlord also entered into written evidence a copy of the tenant's November 14, 2013 letter to the landlord in which the tenant advised that the tenants were going to be late in paying their \$700.00 installment due the following day. Although it has no bearing on the payment of rent due on November 15, 2013, the tenant also noted that the tenants also expected to be late in making their payment due at the end of that month (i.e., November 30, 2013).

The landlord also entered into written evidence a copy of a \$700.00 December 18, 2013 rent receipt for rent due on December 15, 2013. The landlord submitted a copy of a

cheque from the male tenant in the amount of \$700.00 dated December 18, 2013. The male tenant did not dispute the December 18, 2013 date of this cheque.

As was noted above, the landlord gave sworn testimony supported by written evidence in the form of rent receipts that she did not receive any of the monthly rent due on February 15, 2014, until she received a cheque for \$500.00 on February 15, 2014, followed by a \$200.00 cash payment on February 19, 2014. The male tenant testified that he paid the \$500.00 cheque on February 15, 2014 and the remaining \$200.00 by February 15, 2014. However, I find that this sworn testimony is in contravention of an undisputed copy of the male tenant's letter of February 16, 2014, entered into written evidence by the landlord. I find that the male tenant's own letter confirmed that all of the monthly rent was not paid to the landlord until after February 15, 2014, when it became due.

The male tenant gave sworn testimony that the tenants were late in paying their rent "a couple of times." He said that this occurred when he did not get his paycheque until after the 15th of each month. He testified that this first occurred in mid-July, when the tenants were unable to pay their monthly rent until July 16th. If this testimony were correct, this would constitute a fifth month when the tenants were late in paying their rent in full by the 15th of each month. However, I note that this portion of the male tenant's sworn testimony is inconsistent with the sworn testimony provided by both the female tenant and the landlord. For her part, the landlord testified that she insisted on receiving the tenants' first rent payment before she gave them the keys to the rental unit on July 11, 2013. The male tenant's sworn testimony is also inconsistent with the sworn testimony of the female tenant who maintained that the rent due on July 15, 2013 was actually paid during the first week of July 2013.

Although the tenants claimed that the landlord was tardy in issuing receipts at times and did not issue some receipts at all, I find on a balance of probabilities these claims unsubstantiated, given the detailed and extensive series of receipts issued by the landlord for this tenancy. While I find significant inconsistencies between the tenants' sworn testimony and the written evidence, some of which was written by the tenants, I find no such inconsistencies in the landlord's evidence or in her sworn testimony.

Near the end of this hearing and by the time that it appeared that the landlord had established that there had been at least three occasions where rent for this tenancy had been paid late, the female tenant asked that some of the earlier instances of the tenants' late payment of rent be disregarded, as their more recent pattern of rental payments has improved. As was noted earlier, Policy Guideline 38 does not require that there be a constant pattern of late payments of rent to establish a landlord's right to issue a 1 Month Notice for the late payment of rent. In this case, I find that problems

with respect to the timely payment of rent surfaced early in this tenancy and have continued throughout most of this tenancy.

Under these circumstances and based on a balance of probabilities, I find that the landlord has met the burden of proof required to establish that she had grounds to issue the 1 Month Notice as a result of the tenants' repeated late payment of rent. I dismiss the tenants' application to cancel the 1 Month Notice and issue an Order of Possession in the landlord's favour to take effect on May 31, 2014. Given the timing of this hearing and the male tenant's undisputed sworn testimony that all monthly rent has currently been paid, I have delayed the effective date of this Order of Possession until May 31, 2014, to enable the parties to ensure that all rent owing for the period to end by May 31, 2014 has been paid by the tenants to the landlord. By delaying the effective date of this Order of Possession until May 31, 2014, I anticipate that any further confusion as to what remains owing for the remainder of the tenancy can be resolved.

I find no merit in the tenants' claim that they are entitled to a monetary award for harassment or for alleged overpaid rent. I agree that the landlord has issued many 10 Day Notices for this tenancy. However, I do not find that the landlord's actions in issuing notices to end tenancy, many of which I find entirely within the landlord's rights, entitle the tenants to any form of compensation in exercising her rights under the *Act*. Furthermore, if the tenants made cash payments to the landlord without insisting upon receiving receipts at the time of these payments, they did so at their own peril. I dismiss the tenants' claim for a monetary award and all other aspects of the tenants' application for the issuance of various orders without leave to reapply. I find that the tenants' evidence does not support the issuance of any such awards or orders against the landlord.

As the landlord has been successful in this application, I allow her application to recover her filing fee from the tenants. Since the tenants have been unsuccessful in this application, they bear the costs of their filing fee.

Conclusion

I dismiss the tenants' application to cancel the landlord's 1 Month Notice without leave to reapply. I allow the landlord's application to end this tenancy on the basis of the 1 Month Notice and provide the landlord with a formal copy of an Order of Possession effective by 1:00 p.m. on May 31, 2014. 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 award in the landlord's favour in the amount of \$50.00. To implement this award, I order the landlord to retain \$50.00 from the tenants' \$700.00

security deposit. I order that the revised value of the tenants' security deposit currently retained by the landlord is now set at \$650.00.

I dismiss the landlord's application for a monetary award for damage and to retain the remainder of the tenants' security deposit with leave to reapply.

I dismiss the remainder of the tenants' application without leave to reapply.

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: May 12, 2014

Residential Tenancy Branch

