



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding McCandu Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, OPC, OPB / MNR / MNDC / MNSD / FF
CNR / OLC / ERP / RP / FF

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent or utilities / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for cancellation of a notice to end tenancy for unpaid rent / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to make emergency repairs for health or safety reasons / an order instructing the landlord to make repairs to the unit, site or property / and recovery of the filing fee.

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 a 2 storey house. There are 2 rental units in the upper portion, and 2 rental units in the lower portion. The subject unit is 1 of the 2 units located in the lower portion of what is a four plex.

Pursuant to a written tenancy agreement the tenancy began on August 01, 2012. Monthly rent is due and payable in advance on the first day of each month. While monthly rent is shown on the tenancy agreement as \$1,050.00, by way of mutual agreement rent was reduced by \$25.00 to \$1,025.00 in exchange for yard maintenance tasks undertaken by the tenant. A security deposit of \$525.00 was collected.

The original landlord sold the property to the current landlord in September 2013. Effective October 01, 2013 the rent was required to be paid to the current landlord.

Pursuant to section 46 of the Act which speaks to **Landlord's notice: non-payment of rent**, arising from rent which was unpaid when due on April 01, 2014, the landlord issued a 10 day notice to end tenancy dated April 02, 2014. Rent for April was subsequently paid in full.

Thereafter, pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated April 30, 2014. The landlord claims the notice was served in-person on that same date, however, the tenant claims she was not served. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is May 31, 2014. Reasons shown on the notice in support of its issuance are as follows:

Tenant is repeatedly late paying rent.

Tenant has allowed an unreasonable number of occupants in the unit.

Tenant or a person permitted on the property by the tenant has:

significantly interfered with or unreasonably disturbed another occupant or the landlord.

put the landlord's property at significant risk.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

There is no evidence before me that the tenant applied to dispute the 1 month notice.

Following this, arising from rent which remained unpaid when due on May 01, 2014, the landlord issued a 10 day notice to end tenancy dated May 03, 2014. The landlord claims the notice was served in-person on May 03, 2014, however, again the tenant claims she was not served. A copy of the notice was submitted in evidence. In any event, the tenant does not dispute that rent has not been paid for May.

The tenant filed her application for dispute resolution on April 08, 2014. Further to the application itself, documentary evidence submitted with the application was limited to a copy of the landlord's 10 day notice dated April 02, 2014. Subsequently, the tenant submitted additional documentary evidence to the Branch by way of 2 separate

packages: one on May 16, 2014, and the other on May 18, 2014. While the tenant testified that she copied the landlord on both of these packages and sent them by way of regular mail, the landlord testified that no such documentation has thus far been received. The aforementioned documentation includes information in support of the tenant's claim for miscellaneous compensation related to, among other things, allegations concerning withdrawal of parking space, existence of rodents, the condition of the fridge, in addition to the loss of foodstuffs and certain possessions.

The landlord filed his application for dispute resolution on April 29, 2014. In addition to seeking an order of possession, the landlord seeks miscellaneous compensation, only some aspects of which were settled by the parties during the hearing. In summary, the landlord seeks compensation which includes the alleged loss of rental and utilities income for another other rental unit located in the house. The landlord takes the position that prospective renters were dissuaded from renting as a result of the conduct and behaviour of the subject tenant.

In the hearing the parties undertook to resolve at least some aspects of their dispute.

Analysis

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

Section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a partial resolution and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the tenant will vacate the unit by no later than **1:00 p.m., Sunday, June 15, 2014**, and that an **order of possession** will be issued in favour of the landlord to that effect;
- that the landlord will retain the tenant's full security deposit of **\$525.00**;
- that the landlord's retention of the tenant's full security deposit serves to offset the tenant's obligation to pay all applicable utilities which are still unpaid (including late payment fees) from the start of tenancy up to and including June 15, 2014;
- that the tenant is responsible for payment of rent for the period from June 01 to 15, 2014, in the full amount of **\$512.50** ($\$1,025.00 \div 2$).

Based on the documentary evidence and testimony, the remaining aspects of the respective applications and my related findings are set out below.

LANDLORD

\$1,025.00: *unpaid rent for May*

Section 26 of the Act speaks to **Rules about payment and non-payment of rent**, in part as follows:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant does not dispute the landlord's claim that no rent has presently been paid for May. Accordingly, I find that the landlord has established entitlement to the full amount claimed, and I hereby issue a **monetary order** in favour of the landlord to that effect.

\$512.50: *the prospect of unpaid rent for the period from June 01 to 15, 2014*

In view of the tenant's failure to pay rent for May as required by the legislation and the tenancy agreement, I find that the landlord's misgivings around the tenant's intentions related to paying rent for the limited period of occupancy during June, are not unfounded. Accordingly, I hereby issue a separate **monetary order** in favour of the landlord in the amount of **\$512.50**; this monetary order is of no force or effect in the event the tenant pays the half month's rent in full by the due date of June 01, 2014, or in any event, by not later than June 15, 2014 which is when the order of possession takes effect and the tenancy ends.

\$2,400.00 [(\$1,050.00 x 2) + (\$150.00 x 2)]: *loss of rental income and utilities from an adjacent (upper) rental unit for April and May*

I find there is insufficient evidence that the tenant's conduct and behaviour was principally responsible for the landlord's inability to find renters for the adjacent rental unit. Accordingly, this aspect of the landlord's application is hereby dismissed.

TENANT

Undetermined amount of compensation: *miscellaneous damages / reduction in the value of tenancy*

I am unable to conclude that the tenant served the landlord with copies of all documentation upon which she intends to rely in requesting compensation. Further, I note that beyond seeking to recover the filing fee, in her original application the tenant has not applied for compensation. It is only within the documentary packages later submitted by the tenant where she sets out a request for miscellaneous compensation. However, the tenant did not amend her original application or re-serve it to the landlord to reflect that she seeks compensation in addition to other remedies sought. In the result, the tenant has the option to file a new application for dispute resolution.

The respective applications to recover the filing fee are both hereby dismissed.

Finally, for information, 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**, as follows:

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.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective **1:00 p.m. Sunday, June 15, 2014**. This order must be served on the tenant. Should the tenant 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,025.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a separate **monetary order** from the one immediately above, in favour of the landlord in the amount of **\$512.50**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

The landlord's application for compensation related to the alleged loss of rental and utilities income for a rental unit located adjacent to the subject unit is hereby dismissed.

In view of the impending end to tenancy, the tenant's application for certain orders to be issued against the landlord is hereby dismissed.

Both applications to recover the filing fee are hereby dismissed.

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 29, 2014

Residential Tenancy Branch

