



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOODRICH REALTY INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OLC, MNR, MNSD, MNDC, FF, O

Introduction

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

- 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;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72; and
- an "other" remedy, described in the "Details of Dispute" section of their application, which I interpret to be a request for a monetary order for the cost of their moving expenses.

This hearing also dealt with the landlord's cross application pursuant to the Act for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and compensation for damage or loss under the Act 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 its filing fee for this application from the tenant 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.

Preliminary Issue: Service of Documents

Tenants' Documents

The tenants filed their application for dispute resolution on 20 October 2014. The tenant SC testified that he served the landlord with the tenants' dispute resolution package on 20 October 2014 by leaving it with an agent of the landlord at the landlord's corporate office. The landlord's agent testified that she was in possession of the tenants' dispute resolution package. On the basis of this evidence, I am satisfied that the landlord was served with notice of this application pursuant to sections 89 and 90 of the Act.

SC testified that he served the tenants' evidence at some point the week before this hearing to the landlord by delivering it to the landlord's place of business. This evidence included a letter dated 17 September 2014 and hydro bills. The landlord's agent testified that she had not received this evidence and only had possession of the two pages contained in the tenants' dispute resolution package. I could not locate this evidence in any of the dispute files. Accordingly, this evidence was not filed within the time limit prescribed in the Rules of Procedure, rule 3.14. On this basis, I have excluded the tenants' evidence.

Landlord's Documents

The landlord's agent testified that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was served to the tenants on 8 October 2014 by registered mail. The landlord's agent was unable to provide me with the Canada Post tracking number for this mailing, but the tenant SC testified that he did receive the notice. The tenant SC testified that he did not receive the 10 Day Notice until 16 or 17 October 2014. On the basis of this evidence, I am satisfied that the tenants were served with the 10 Day Notice on 17 October 2014 pursuant to sections 88 and 90 of the Act.

The landlord's agent testified that the landlord's dispute resolution package, including all its evidence, was served to the tenants on 24 October 2014 between 1900 and 2000. I was provided with a signed declaration that confirmed the same. The tenants initially denied having received the landlord's evidence, but were eventually able to locate the evidence and accept that they were served with it. On this basis, I am satisfied that the tenants were served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for damage or loss arising out of this tenancy? Are the tenants entitled to an order requiring the landlord comply with the Act, regulation or tenancy agreement? Are the tenants entitled to recover their filing fee for this application from the landlord?

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover its filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and text messages, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenants' claim and the landlord's cross claim and my findings around each are set out below.

The tenants and landlord both agree that the tenants have paid rent for neither October 2014 nor November 2014.

The tenancy agreement, which was not in the form provided by the Residential Tenancy Branch, included the following:

- the tenancy is between SC and KD as tenants and the landlord;
- the tenancy began 18 October 2013;
- rent of \$1,800.00 to be paid on the first is due monthly;
- a security deposit of \$900.00 was received by the landlord;
- clauses contained within the agreement:

This is a fixed term tenancy, length of tenancy 12 months + part Oct/13 ending on October 31/14

At the end of this fixed length of time, the tenancy may:

The tenancy ends and the tenant must move out of the residential premises unless renewal or new tenancy for another fixed length of time is agreed in writing by both parties prior to the end of this tenancy. The Tenant agrees to provide the Landlord minimum one calendar month notice to request for renewal of the tenancy or to notify the Landlord that the will be moving out at the end of the

tenancy. If one calendar month notice is not provided by the Tenant, the Tenant agrees to pay for up to one month rent to the Landlord due to vacancy loss of rent.

[initialled by landlord and tenant]

Tenant to set up hydro + gas account. Tenant to be responsible for 65% of hydro + gas. Landlord to pay tenant \$35% of hydro + gas back.

[initialled by landlord and tenant]

The tenant agrees to pay a late fee of \$25 when rent is not paid on the first of each month.

The Tenant hereby agrees that: ...

There are no other representations made by the Landlord on the property or on the tenancy other than those in this Tenancy Agreement or are made in writing.

The landlord's agent testified that the landlord still holds the tenants' \$900.00 security deposit.

The tenant SC testified that they would deduct 35% of the hydro and gas bill from their monthly rent. The landlord agreed that this had been the practice. The tenant SC testified that he had not provided the landlord with copies of the hydro bills since May 2014 as they had been stolen from his mailbox. The tenant SC testified that he had been going online to receive his hydro bill. The landlord's agent testified that she did not receive invoices for hydro and gas when she asked for them from the tenant.

The tenant SC provided evidence regarding the number of occupants in the downstairs rental unit and the downstairs tenant's production and use of marijuana. Specifically, the tenant SC submitted that the downstairs tenant's use of energy was higher than the 35% for which he was being compensated. The tenant provided evidence that the downstairs tenant smoked marijuana outside her front porch. The landlord testified that the downstairs tenant was a medical marijuana user. The landlord's agent testified that the landlord and downstairs tenant had an agreement that the downstairs tenant would only smoke marijuana outdoors, and away from doors or windows

Analysis –Landlord's Application

I will deal with the landlord's claims first.

Paragraph 90(a) of the Act deems that documents delivered by registered mail are deemed received on the fifth day after the documents' mailing. This is a rebuttable presumption. The tenant SC testified that he did not receive the 10 Day Notice until 16 or 17 October 2014. The tenants filed their application for dispute resolution of 20 October 2014. I accept that the tenants did not receive the 10 Day Notice by the deemed service date of 13 October 2014; however, while the tenants applied for dispute resolution, they did not apply to cancel the notice. Thus, in accordance with paragraph 46(5)(a) of the Act, the tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the notice.

Furthermore, the tenants have not paid rent for either of October 2014 or November 2014, and have no lawful reason to withhold rent under the Act, regulations or tenancy agreement. Accordingly, the landlord is entitled to an order of possession on the basis of the 10 Day Notice.

The tenants admit that they have not paid rent for October 2014 or November 2014. The tenants and landlord agreed to a \$25.00 late fee in their tenancy agreement. The landlord has claimed for an amount of \$3,625.00 on the following basis:

| Item | Amount |
|-------------------------------------|-------------------|
| Unpaid October Rent | \$1,800.00 |
| Unpaid November Rent | 1,800.00 |
| Late Fee | 25.00 |
| Total Monetary Order Claimed | \$3,625.00 |

The landlord is entitled to these amounts.

The landlord applied to keep the tenants' security deposit of \$900.00, which was collected in October 2013. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in its application, it is entitled to recover its filing fee of \$50.00.

Analysis –Tenants' Application

The tenants have asked that the landlord be ordered to comply with the Act, regulations or tenancy agreement. At the hearing, I asked what the tenants were seeking. It seems that the tenants' claim relates to their assertion that their portion of the hydro bill was too high because there were two occupants living downstairs and the allegation that the downstairs tenant was cultivating marijuana, and, as well, the downstairs tenant's use of medicinal marijuana. I was not provided with any corroborating evidence that the downstairs tenant was cultivating marijuana. Additionally, the tenants seek a finding that the fixed term tenancy was renewed.

In relation to the tenants' claim that their portion of the hydro bill was too high, I find that the tenants and landlord entered into a binding and valid tenancy agreement, which included the allocation of hydro expenses. The tenancy agreement specifically outlines that the landlord made no other representations other than those expressly contained in the tenancy agreement. Thus, there is no reason to alter the agreement on the basis that there was an extra occupant in the downstairs tenancy or on the allegation that the downstairs tenant was cultivating marijuana. Accordingly, the tenants are bound by their agreement for a 65/35 split for hydro and gas. The tenants' request for an order that the landlord complies with the Act on this basis is dismissed without leave to reapply.

In respect of the downstairs tenant's use of medicinal marijuana, I find that the landlord made sufficient arrangements with the downstairs tenant to respect these tenants' use and enjoyment of the rental unit. The tenants' request for an order that the landlord complies with the Act on this basis is dismissed without leave to reapply.

As I have found that the 10 Day Notice was validly issued, there is no need to consider whether the fixed term tenancy was a fixed term tenancy within the meaning of the Act or whether such tenancy was renewed as the issue is moot.

The tenants have asked for compensation for their moving expenses. I see no basis under the Act, regulations or tenancy agreement for making an award of this nature. The tenants' claim for compensation for their moving expenses is dismissed without leave to reapply.

As the tenants have been unsuccessful in their claim, they are not entitled to recover their filing fee from the landlord.

Conclusion

I grant an order of possession to the landlord effective **two days after service of this order** on the tenant(s). 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 landlord's favour in the amount of \$2,775.00 under the following terms:

| Item | Amount |
|---------------------------------------------|-------------------|
| Unpaid October Rent | \$1,800.00 |
| Unpaid November Rent | 1,800.00 |
| October Late Fee | 25.00 |
| Offset Security Deposit Amount | -900.00 |
| Recovery of Filing Fee for this Application | 50.00 |
| Total Monetary Order | \$2,775.00 |

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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.

The tenants' application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: November 13, 2014

Residential Tenancy Branch

