



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: DRI, CNC, MNDC, OLC, ERP, RP, PSF, LRE, RR, FF, SS

Introduction

This hearing was scheduled in response to the tenant's application for dispute resolution. In her application the tenant seeks to dispute an additional rent increase / cancellation of a notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / 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 / an order instructing the landlord to provide services or facilities required by law / an order suspending or setting conditions on the landlord's right to enter the rental unit / permission to reduce rent for repairs, services or facilities agreed upon but not provided / recovery of the filing fee / and permission to serve documents (not including Notice of Hearing package) in a different way than required by the Act. The tenant attended and gave affirmed testimony.

The tenant testified that the application for dispute resolution and the notice of hearing (the "hearing package") were served on the landlord by way of Xpresspost. Evidence provided by the tenant includes the tracking number for the Xpresspost. The Canada Post website informs that the item was "accepted at the Post Office" on November 20, 2014, and that on November 25, 2014 there was "Attempted delivery. Notice card left indicating where item can be picked up." Despite this, the landlord did not appear, and there is no application for dispute resolution from the landlord before me.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is a manufactured home (the "trailer"). The trailer is located on 2 parcels of land, both of which are understood to be owned by the landlord. At the outset of their relationship in 2002, the tenant was employed as a housekeeper / nanny for the landlord and for the landlord's son from a previous relationship. The landlord, the tenant, and the landlord's son all resided together in a house owned by the landlord, which is separate and distinct from the unit which is the subject of this dispute.

Over time the relationship between the landlord and the tenant became more personal, and the tenant gave birth to a daughter from that relationship. Thereafter, the relationship deteriorated,

the landlord moved to the United States in 2008, and the tenant continued to reside in the house. As the landlord's son got older, the landlord asked the tenant to vacate the house, and to take their daughter and move into the trailer which is the subject of this dispute.

The tenant testified that she reached a verbal agreement with the landlord pursuant to which, in lieu of child support, she would continue to reside in the trailer without paying rent or utilities, until such time as their daughter attained the age of 19 years. The tenant has now resided in the trailer for approximately 7 years, and their daughter is 11 years of age. The tenant confirmed that during the time she has lived in the trailer, she has not been required to pay either rent or utilities. Further, the tenant testified that there are currently no repairs required in the unit.

The tenant claims that in June 2013 the landlord visited her with his "new wife" and informed the tenant of his intention to sell the trailer. The parties were unable to reach agreement associated with the tenant's desire to continue to reside in the trailer, and / or payment of child support. In the result, the tenant served the landlord with an application to obtain an order from the Court. Subsequently, a case conference was held on October 29, 2014. Arising from the case conference it is understood that the landlord has "given up all guardianship" of their daughter.

The landlord served the tenant with a 1 month notice to end tenancy for cause dated November 01, 2014. The notice was served by way of hand delivery to the tenant's porch on November 03, 2014 by a real estate agent representing the landlord. The date shown on the notice by when the tenant must vacate the unit is January 30, 2015, and reasons identified on the notice in support of its issuance are as follows:

Tenant is repeatedly late paying rent

Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit / site or property / park

The template notice has been altered to also indicate that the tenant "did not switch utility's [sic] in here [sic] name." The tenant filed an application to dispute the notice on November 12, 2014.

Further to recovery of the **\$50.00** filing fee, in her application the tenant seeks reimbursement of **\$170.00** for the cost of repair to a clothes dryer.

The tenant testified that a Court hearing scheduled for December 11, 2014 was adjourned pending the landlord's provision of additional information pertinent to income. It is understood that this information will be relevant to a decision of the Court concerning child support. The next scheduled date of Court hearing is March 23, 2015.

Analysis

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

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the circumstances of this dispute fall within the jurisdiction of the Residential Tenancy Act (the "Act"), as opposed to the Manufactured Home Park Tenancy Act. Section 1 of the Act defines "tenancy agreement" as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

I also find that the hearing package was served on the landlord in accordance with the relevant statutory provisions.

Pursuant to section 90 of the Act which addresses **When documents are considered to have been received**, as the 1 month notice was delivered to the tenant's porch on November 03, 2014, I find that the notice is deemed to have been received 3 days later on November 06, 2014. Accordingly, as the tenant's application to dispute the notice was filed on November 12, 2014, I find that her application was filed within the 10 day period available pursuant to section 47(4) of the Act.

In light of the apparent arrangement made between the parties concerning rent and utilities, I find there is no evidence that payment of either monthly rent or utilities is required. Further, I find no evidence that the parties reached any agreement around the quantum of monthly rent or utilities. In the result, I find no evidence that the tenant is "repeatedly late paying rent." Additionally, I find there is no evidence that the tenant has knowingly given "false information to prospective tenant or purchaser of the rental unit / site or property / park."

Further, in view of the reasons described by the tenant for the landlord's wish to end the tenancy (sale of unit), there is no evidence that the proper notice to end tenancy has been given. In this regard, the attention of the parties is drawn to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**.

Following from all of the above, the 1 month notice to end tenancy is hereby set aside, and the tenancy continues in full force and effect.

In regard to the tenant's concern around the landlord's real estate agent's recurring wish to enter the property, attention is drawn to section 29 of the Act which addresses **Landlord's right to enter rental unit restricted**.

As to compensation, I find that the tenant has established a claim of **\$220.00**:

\$170.00: *repair to clothes dryer* + \$50.00: *recovery of the filing fee*

Conclusion

The landlord's notice to end tenancy is hereby set aside, and the tenancy continues uninterrupted.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$220.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

As to the application for "permission to serve documents (not including Notice of Hearing package) in a different way than required by the Act," I am not persuaded that "substituted service" is required. Specifically, the tenant appears to have a current mailing address for the landlord. Accordingly, this aspect of the application is dismissed. Should circumstances change, the tenant has the option of applying to serve documents in a different way than required by the Act. In this regard, section 71 of the Act addresses **Director's orders: delivery and service of documents**.

Unless otherwise noted above, all remaining aspects of the tenant's application 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: December 23, 2014

Residential Tenancy Branch

