



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Casa Jolo Bed and Breakfast
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNR, MNDC, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenants. The hearing was conducted by conference call. The named landlords and the tenant called in and participated in the hearing. The tenant applied to cancel a 10 day Notice to End Tenancy for unpaid rent. The landlord applied for an order for possession and a monetary order for unpaid rent.

Issue(s) to be Decided

Should the Notice to End Tenancy dated December 8, 2014 be cancelled?
Is the landlord entitled to a monetary award for unpaid rent and if so, in what amount?

Background and Evidence

The rental property is described by the landlord as a bed and breakfast facility located in Abbotsford. The rental unit is a basement suite in the residential property. There is no written tenancy agreement. The landlord testified that the tenancy was to be for a two month period commencing September 1, 2014, with rent in the amount of \$1,500.00 payable each month. The landlord claimed that the tenants were responsible for payment of utilities in a fixed amount. The landlord also said that in the second month of the tenancy the rent was supposed to increase to \$1,700.00 per month. The landlord testified that the tenant assaulted her when she attempted to serve him with documents and that there was a restraining order in place preventing the tenant from having contact with her. In the landlord's application the landlord requested an order for possession and claimed payment of the sum of \$4,975.00 in unpaid rent. The landlord claimed that this was a residential tenancy although she described her business as a "bed and breakfast". She said that this was the first time she had entered into a residential tenancy, as opposed to a bed and breakfast rental.

The landlord provided a written submission in which she recorded the receipt of the following payments from the tenant:

• Sept 8, 2014	\$300.00
• Sept 25	\$300.00
• Oct10	\$400.00 (part of Sept. rent)
• Nov 5	\$300.00 (part of Sept rent)
• Nov 8	\$200.00 (part of Sept rent)
	■ <hr/>
	\$1,500.00 (Sept rent finally pd.)
• Oct Rent:	
• Nov 19, 2014	\$150.00 (part of Oct rent)
• Nov 20	\$250.00 (part of Oct rent)
• Dec 8	\$1,000.00 (part of Oct rent)
	<hr/>
	\$1,400.00

The landlord claimed that the following amounts were outstanding:

• Outstanding for Oct \$300.00 + Sept utilities \$75.00 and Oct utilities \$100.00 and Nov utilities \$100.00 and Dec utilities \$100.00	
• Nov rent	\$1,700.00
• Dec rent	\$1,300.00
• Jan rent	\$1,300.00

The tenant disputed the amounts claimed by the landlord. He testified that he has been charged rent for periods before he moved into the rental unit and said that the landlord has tried to raise the rent during the tenancy. The tenant said that he was injured in a work accident and this is why the rent is behind. The tenant submitted a document as evidence described as an amendment. The tenant said that the landlord has interfered with his occupancy by turning off the electrical supply to the kitchen and that she has turned off the heat, hot water and lights. The tenant said the landlord has entered the rental unit without notice when the tenants were away. The tenant said the landlord has purposefully disturbed and annoyed the tenants with loud noises late at night.

The tenant said that he and his family have had to stay elsewhere for the past several weeks because of the disturbances and lack of electricity. The tenant claimed amounts for meals and lodging for the period from December 26th to January 2, 2014 and continuing to the date of the hearing. The tenant did not submit receipts for any

expenditures. The tenant testified that he moved into the rental unit on September 15, 2014, but the landlord is attempting to charge rent commencing September 1st. The tenant complained about the landlord's rent increase and to the addition of utility charges. Although the landlord has not submitted a written tenancy agreement she said there was an agreement that the rent would increase after two months and that the tenant would be responsible for utilities.

The tenants are currently seeking other accommodation.

Analysis

The landlord has not provided a written tenancy agreement. She has formerly operated a bed and breakfast, but she was insistent that this tenancy was not a short-term bed and breakfast stay, but instead a residential tenancy. The landlord has, however attempted to include and enforce terms that have not been recorded in writing and that are unlawful under the provisions of the *Residential Tenancy Act* and Regulation, such as imposing unlawful rent increases and charges for utilities, not recorded in any written agreement.

According to the testimony of the parties they appear to have agreed that the rent for the basement suite would be \$1,500.00 per month. I accept the tenant's evidence that he moved into the rental unit on September 15, 2014. The tenant did not dispute the landlord's evidence as to the rent payments that he has made, but he disagreed with her attempt to charge rent for the whole of September and with the rent increases that she claimed. I find that the parties agreed to a monthly rent of \$1,500.00. I accept the tenant's evidence that he moved in on September 15th and should have been charged rent from September 15th to September 30th in the amount of \$750.00, not for the entire month of September.

The tenant has paid rent in the total amount of \$2,900.00. This covered rent for September 15th to 30th, for the month of October and for a portion of November. I find that there is \$1,150.00 outstanding for November and \$1,500.00 for the month of December. The tenants have been living away from the rental unit since late December. The tenant said that this was because of the landlord's claim that he assaulted her and because the landlords have cut off power and interfered with the tenants' occupation of the rental unit compelling them to find other temporary occupation. Because of these circumstances I decline to award the landlord any amount for rent claimed for the month of January.

The tenant was served with a 10 day Notice to End Tenancy dated December 8, 2014. Although the amount stated in the Notice to End Tenancy was incorrect, the tenant has not made any rent payment pursuant to the Notice to End Tenancy and I find that the notice should be upheld. I dismiss the tenant's application to cancel the Notice to End Tenancy without leave to reapply and I grant the landlord's application for an order for possession effective two days after service on the tenants. This order may be registered in the Supreme Court and enforced as an order of that court. The tenant did not submit any documentary evidence to support his monetary claim. The tenant's amended application seeking a monetary award is dismissed without leave to reapply.

Conclusion

I grant the landlord a monetary award for November and December rent in the total amount of \$2,650.00. All other claims by the landlord are dismissed without leave to reapply. In light of the divided success, I decline to award the landlord the filing fee for her application. I grant the landlord an order under section 67 in the amount of \$2,650.00. This order may be registered in the 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: January 22, 2015

Residential Tenancy Branch

