



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, DRI, AS, O

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss and “other”. It is apparent from information in the “details of dispute” section of the Application that the Landlord is seeking an Order of Possession. At the hearing the Tenant stated that she understood the Landlord was seeking an Order of Possession. I therefore find it reasonable to consider an application for an Order of Possession at this hearing.

The male Landlord stated that on February 04, 2015 the Application for Dispute Resolution and the Notice of Hearing were posted on the door of the rental unit. The Tenant stated that these documents were received on February 04, 2015.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to dispute an addition rent increase; for authority to assign or sublet the rental unit; and “other”.

The Tenant stated that on February 06, 2015 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord. The Landlord acknowledged receipt of these documents on February 06, 2015.

The Landlord submitted evidence to the Residential Tenancy Branch which was not served to the Tenant as evidence for these proceedings. As the evidence was not served to the Tenant as evidence for these proceedings, it was not accepted as evidence.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Has this tenancy ended by mutual consent?
Should the Tenant be granted authority to assign the tenancy or sublet the rental unit?
Should the Landlord be granted an Order of Possession?
Has there been an unlawful rent increase?
Is the Landlord entitled to unpaid rent/lost revenue for February of 2015?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began before the Landlord purchased the rental unit on November 26, 2014.

The Tenant contends that she signed a new tenancy agreement with this Landlord on December 01, 2014. The Landlord contends that this Landlord has not signed a new agreement with the Tenant. A copy of a written tenancy agreement has not been introduced as evidence.

The Landlord and the Tenant agree that when the Landlord purchased the rental unit the monthly rent was \$975.00, due by the first day of each month.

The Tenant stated that when she paid her rent on January 01, 2015 the Landlord told her that rent would be increased to \$1,200.00 as there were three people living in the rental unit. The male Landlord stated that when the Tenant paid her rent on January 03, 2015 she was told her that rent would be increased to \$1,200.00 as there were three people living in the rental unit.

The Landlord and the Tenant agree that the Tenant paid \$975.00 in rent for January and she has not paid rent for February of 2015. The Landlord is seeking unpaid rent for February as the Tenant is still occupying the rental unit.

The male Landlord stated that they do not have a tenancy agreement that stipulates rent will increase if additional people reside in the rental unit and the Tenant was not given a written notice of a rent increase.

The Landlord and the Tenant agree that on January 03, 2015 they mutually agreed to end the tenancy on January 31, 2015. The parties agree that they each signed a written document regarding this end of tenancy. The Tenant stated that she felt pressured into signing the agreement because of the rent increase the Landlord was attempting to impose.

The Landlord is seeking an Order of Possession on the basis of this mutual agreement to end the tenancy, to be effective February 28, 2015.

The Tenant stated that she did not vacate the rental unit on January 31, 2015 because she had been unable to locate alternate accommodations by that date. She would like authorization to assign the tenancy or to sublet the rental unit to friends.

Analysis

On the basis of the undisputed evidence, I find that the Tenant and the Landlord had a tenancy agreement that required the Tenant to pay monthly rent of \$975.00 by the first day of each month. For the purposes of this decision, it is not necessary for me to determine whether this agreement was a written or an oral agreement.

I find there is no evidence to show that the Landlord has increased the rent in accordance with part 3 of the *Residential Tenancy Act (Act)*. As the rent has not been lawfully increased, the Landlord did not have the right to collect more than \$975.00 in rent per month. I note that there is no evidence to show that the Landlord has collected more than \$975.00 per month in rent.

I find that the mutual agreement to end the tenancy that was signed by both parties served to end this tenancy on January 31, 2015, pursuant to section 44(1)(c) of the *Act*. As the rental unit has not yet been vacated, I find that the Landlord is entitled to an Order of Possession.

In determining this matter I have placed little weight on the Tenant's submission that she signed the mutual agreement because the Landlord informed her that the rent would be increased. The Tenant did not pay a rent increase for January and she therefore had time to contact the Residential Tenancy Branch to determine whether the rent could be increased before she signed a mutual agreement to end the tenancy. In my view both the Tenant and the Landlord have an obligation to understand their rights and obligations under the *Act*, and to seek assistance if they are unsure of those rights and obligations.

Coercion is typically understood to be the practice of forcing another party to act in an involuntary manner by use of intimidation, threats, or other form of unethical pressure. In the absence of evidence to show that the Landlord was knowingly acting unlawfully for the purpose of forcing the Tenant to sign the mutual agreement to end the tenancy, I cannot conclude that an attempt to impose an unlawful rent increase constitutes coercion. I find that this is particularly true when the rent increase has not been imposed and the Landlord has made no attempts to enforce the rent increase.

As the Tenant did not vacate the rental unit on January 31, 2015 and the Landlord is being granted an Order of Possession for February 28, 2015, I find that the Tenant is obligated to pay rent for the month of February.

As this tenancy has ended, I find that the Tenant does not have the right to assign the tenancy or sublet the rental unit.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on February 28, 2015. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim of \$975.00 for unpaid rent and I grant the Landlord a monetary Order for this amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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: February 18, 2015

Residential Tenancy Branch

