



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNDC, OLC, ERP, RP, PSF, RPP, LRE

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated January 14, 2015 ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- a monetary order for money owed or 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;
- an order to the landlord to make emergency repairs for health or safety reasons, pursuant to section 33;
- an order to the landlord to make repairs to the rental unit, pursuant to section 33;
- an order to the landlord to provide services or facilities required by law, pursuant to section 65;
- an order requiring the landlord to return the tenant's personal property, pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70.

Both parties attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with a 10 Day Notice by way of posting to her rental unit door on January 14, 2015. The landlord provided a witnessed and signed proof of service to confirm this posting. The tenant confirmed receipt and indicated that she was unsure of the exact date of receipt, but estimated that it was on

January 15, 2015. In accordance with sections 88 and 90 of the Act, I find that the tenant was duly served with the landlord's 10 Day Notice.

The tenant testified that the landlord was served with the tenant's application for dispute resolution hearing notice and first written evidence package ("Application") on January 29, 2015, by way of registered mail. The landlord confirmed receipt of the tenant's application. In accordance with sections 89 and 90 of the Act, I find that the landlord was duly served with the tenant's Application, as declared by the parties.

The tenant testified that the landlord was served with the tenant's 18-page second written evidence package on February 4, 2015, by way of registered mail. The tenant did not submit any Canada Post receipts or tracking numbers with her Application. The tenant was unable to provide a tracking number to confirm this mailing, orally during the hearing. The landlord indicated that he did not receive the tenant's second written evidence package. As per Rule 3.14 of the Residential Tenancy Branch ("RTB") Rules of Procedure, the evidence was not served at least 14 days before the hearing. The evidence was available to the tenant at the time of filing her Application, although she took some time to locate the relevant documents. As there was no documented evidence of service, the landlord did not receive the evidence, the evidence is late and is not new, and there may be prejudice to the landlord in considering the evidence, I advised both parties that I would not be considering the tenant's second written evidence package at this hearing.

The landlord testified that the tenant's stepdaughter, "A," was personally served by the landlord's female agent with the landlord's 107-page written evidence package on February 6, 2015. The landlord stated that A lived with the tenant and was over 19 years of age. The tenant indicated that she did not receive the landlord's written evidence package and that A was not her stepdaughter but was her daughter's friend. As per Rule 3.15 of the Residential Tenancy Branch ("RTB") Rules of Procedure, the evidence was not served at least 7 days before the hearing. The landlord is required to serve an adult who apparently resides with the tenant, as per section 88 of the Act. The landlord did not produce any independent evidence to indicate that A apparently resides with the tenant. As service was not made in accordance with the Act, the tenant did not receive the evidence, the evidence is late, and there may be prejudice to the tenant in considering the evidence, I advised both parties that I would not be considering the landlord's written evidence package at this hearing.

During the hearing, the tenant withdrew her application to cancel the 1 Month Notice, for an order to the landlord to make emergency repairs and to return the tenant's personal property. Accordingly, these portions of the tenant's application are withdrawn.

During the hearing, the landlord made an oral request for an order of possession.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to the landlord to make repairs to the rental unit?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Background and Evidence

The landlord testified that the tenancy with this landlord began on June 3, 2011, when the tenant began occupying the upper portion of a house ("original tenancy"). The rent for the original tenancy was \$1,550.00 per month. A security deposit of \$750.00 was paid by the tenant for this original tenancy.

The tenant began a new tenancy ("current tenancy") with this landlord on October 1, 2013 to present, where she occupies the basement unit of the same house ("rental unit"). The current tenancy was initially for the fixed term period of October 1, 2013 to June 30, 2014, after which it transitioned to a month to month tenancy. The written tenancy agreement indicates that this current tenancy began on June 1, 2013, but both parties indicated that this date was in error. The tenancy agreement does not indicate any period for this current tenancy. Current rent in the amount of \$925.00 is payable on the first day of each month for this current tenancy and is noted in the tenancy agreement. The landlord applied the tenant's entire security deposit of \$750.00 towards the rent payment for October 2013 for the current tenancy as well as to cover damages for the upper unit when she vacated that portion of the property. A pet damage deposit of \$250.00 was paid by the tenant in October 2013 for this current tenancy and the

landlord continues to retain this pet damage deposit. The tenant continues to reside in the rental unit.

The tenant testified that she filed her original Application on January 23, 2015 and her amended Application on January 28, 2015. The tenant stated that she was not aware that she applied beyond the five day time period under section 46(4) of the *Act*, to make an application to dispute the 10 Day Notice. The tenant did not apply for more time to cancel the 10 Day Notice.

The tenant indicated that the landlord disconnected her cable, internet and home phone services that were included as part of her rent under the current tenancy and as per the tenancy agreement. The tenant stated that the landlord did not provide her with 30 days written notice and did not reduce her rent for this disconnection in service. The landlord stated that he did not disconnect the tenant's phone services but that the bills were unpaid so it was automatically disconnected. The tenant seeks a monetary order in the total amount of \$2,000.00 as compensation. The landlord stated that the cost of cable, internet and home phone is approximately \$85.00 per month.

The tenant stated that various repairs need to be made by the landlord in the rental unit, including for a leaking faucet in the bathroom and appliances that do not work. The tenant stated that she has suffered a loss of the use of her yard because other people store their belongings there.

The 10 Day Notice indicates that \$1,404.00 in rent was due on January 1, 2015. The notice indicates an effective move-out date of January 21, 2015. The tenant indicated that she only owes \$182.00 in unpaid rent to the landlord, dating back to November 2014. The landlord stated that the tenant owes approximately \$1,489.00 plus hydro for rent, cable movie rentals, RTB fees, late rent fees, and borrowed money from the landlord.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on April 30, 2015, by which time the tenants, her children and any other occupants will have vacated the rental unit;
2. The landlord agreed to restore basic internet, cable and home phone services at the rental unit by February 28, 2015;
 - a. The landlord will pay for the entire cost of the basic internet, cable and home phone services at the rental unit from the time that it is restored until the end of this tenancy on April 30, 2015;
3. The tenant agreed that this agreement settled all aspects of her monetary claim against the landlord in this application and arising out of this tenancy, to date.
4. Both parties agreed that this agreement settles all aspects of the landlord's potential monetary claims against the tenant arising out of this tenancy, to date.
5. Both parties agreed that the tenant does not owe any unpaid amounts, to date, including for rent, hydro, cable movie rentals, RTB fees, late rent fees, borrowed money from the landlord, and any other fees, losses or compensation, arising out of the original tenancy and this current tenancy;
6. Both parties agreed to waive their legal rights and not pursue any future monetary claims or applications against each other at the RTB with respect to any issues arising out of this tenancy, to date.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties gave verbal sworn affirmation at the hearing that they understood and agreed to the above terms. Both parties affirmed that they understood that the terms are legal, binding and settle all aspects of this dispute.

Conclusion

To give effect to the settlement reached between the parties, I issue the attached Order of Possession to be used by the landlord **only** if the tenant, her children and any other occupants fail to vacate the rental premises by 1:00 p.m. on April 30, 2015. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant, her children and any other occupants fail to vacate the rental premises by 1:00 p.m. on April 30, 2015. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's 10 Day Notice, dated January 14, 2015, is cancelled and of no force or effect.

The tenant's application to cancel the 1 Month Notice, for an order to the landlord to make emergency repairs and to return the tenant's personal property, are all withdrawn.

I also order that the settlement reached between the parties has no bearing on the tenant's responsibility for paying rent that becomes owing on March 1, 2015 and April 1, 2015, as per the terms of their tenancy agreement.

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 27, 2015

Residential Tenancy Branch

