



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, O; MNDC, OLC, LRE, O

Introduction

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

- an order of possession based on tenant's notice pursuant to section 55; and
- an "other" remedy.

This hearing also dealt with the tenant's application pursuant to 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;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an "other" remedy.

The tenant KS (the tenant) appeared. The landlord appeared. Both parties in attendance were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Neither party raised any issues with service.

Preliminary Issue – "Other" Remedy

Neither party sought an "other" remedy that is not captured in their other claims. As such, I dismiss the tenant and landlord's claims for "other" remedies without leave to reapply.

Preliminary Issue – Claim Against Tenant RR

The tenant RR vacated the rental unit 29 May 2015. He did not appear at the hearing.

As the tenant RR has vacated the rental unit, I dismiss the landlord's claim against the tenant RR as the issue is moot.

Issue(s) to be Decided

Is the landlord entitled to an order of possession on the basis of the tenant's notice? Is the tenant entitled to a monetary order for 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 suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70?

Background and Evidence

While I have turned my mind to all the documentary evidence, 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 tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began 1 November 2014. On or about 24 September 2014, the tenants and the landlord entered into a written tenancy agreement. The agreement was signed by both tenants and the landlord. Monthly rent of \$750.00 is payable on the first. This tenancy agreement was for an initial fixed term ending 1 June 2015. After this time the tenancy was set to continue as a month-to-month tenancy.

The tenants are co-parents of an infant. The landlord is the tenant RR's mother. At some point in the end of March the tenant RR stopped residing at the rental unit, but had not removed the majority of his possessions at that time (those possessions were removed at the end of May). The landlord testified that the tenant RR does not have any ownership interest in the rental unit. The landlord testified that she is the only owner of the rental unit. The landlord testified that there is no intention that the tenant RR move back into the rental unit.

The tenant testified that at some point on 30 April 2015 the tenant RR provided a notice to end tenancy (the Notice) to the landlord:

April 30, 2015

To: [landlord]

Regarding the rental townhouse at [address], I am giving my 1 months notice to end tenancy.

[tenant]

[tenant's signature]

[as written]

On 1 May 2015 the landlord personally delivered a notice to show the unit on 16 May 2015 and 24 May 2015 to the tenant. That notice set out that the Notice had been given in respect of the rental unit.

On 3 May 2015 the tenant's mother wrote to the landlord. In that letter there is reference to the Notice.

On 4 May 2015 the tenant created a written statement that, when the tenant paid her rent 1 May 2015, she was unaware that the tenant RR had provided the Notice. The tenant notes that she has not seen a copy of the Notice. The tenant testified that she has asked for a copy of the Notice on more than one occasion. The tenant testified that she did not receive a copy of the Notice until a copy was provided with the landlord's evidence. The tenant testified that she asked the tenant RR for a copy of the Notice and he said that he "had nothing to do with it". The tenant RR did not provide a copy of the Notice to the tenant.

The tenant provided rent payments for both May and June's rent. The landlord testified that she issued receipts for these payments on the basis that they were received for the tenant's use and occupancy of the rental unit. The landlord provided me with a copy of May's receipt. That receipt sets out that the payment was received for the tenant's occupancy of the rental unit.

The tenant claims for compensation totaling \$621.00:

Item	Amount
No Mail Key	\$50.00
Registered Mail	21.00
Two Improper Entries	100.00
Car Seat	300.00
Stress and "Lossed" Time	150.00
Total Monetary Order Sought	\$621.00

The tenant testified that she does not have a copy of the mail key. The tenant testified that she used to be in possession of the mail key and that the tenant RR took possession of that key at some point in March 2015. The tenant testified that she has asked the landlord for a copy and that it has not been provided. The landlord testified that she believes that the tenant RR is still in possession of the mail key.

The tenant claims for registered mailing costs incurred in relation to these applications. The tenant claims for "stress and lossed time". The tenant testified that this claim is in relation to the time she spent preparing for these applications.

The tenant alleges that the landlord entered into the rental unit without the tenant's permission.

I was provided with a statement by CS. CS is a friend of the tenant. CS attended at the rental unit in March 2015 to take care of the tenant's cat while she was away. The statement sets out that CS believes that someone entered the rental unit on 21 March 2015 and 23 March 2015. The tenant provided text messages between CS and the tenant. In those messages CS indicates that she believes that someone had entered the rental unit.

I was provided with a statement from SR. SR is a friend of the tenant. SR indicates that at some point in mid-April the landlord and the tenant RR attended at the rental unit for a scheduled visit. SR states that the landlord used her own keys to open the door and entered the rental unit. The tenant testified that pick up and drop off between the tenants is always supervised. The tenant testified that the landlord will often supervise on behalf of the tenant RR. The tenant testified that the tenant RR was with the landlord that day.

The tenant testified that she believes that the car seat was taken from the rental unit on Easter weekend of this year. The tenant testified that she became aware it was missing when she saw the seat installed in the tenant RR's car. The landlord testified that the tenant RR has the car seat. The landlord submits that the car seat is a family matter.

The landlord provided me with text messages sent between the tenant RR and the landlord. There are a series of text messages from 14 March 2015 to 19 March 2015. In these messages the tenant RR provides permission to the landlord to enter the rental unit for the purposes of collecting mail and attending to a cat. In another text message the tenant RR acknowledges having the child's car seat and that he took it when he and the tenant separated.

Analysis

These matters are complicated by the ongoing family matters between the co-tenants in relation to their separation and guardianship of a child.

In accordance with section 44 of the Act, a tenancy ends where:

- the landlord or tenant gives notice,
- the landlord and tenant agree; or
- the tenant abandons the rental unit.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Pursuant to subsection 45(4) of the Act, a notice given pursuant to section 45 must comply with section 52 of the Act.

Section 52 sets out the various requirements of a notice to end tenancy:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,...

The Notice provided to the landlord by the cotenant sets out the date, is signed by the cotenant, and sets out the address of the rental unit. The effective date of the Notice is set out as "1 months notice". One month from the date of the Notice is 30 May 2015. As the tenants were entered into a fixed term tenancy that ended 1 June 2015 with rent due on the first of the month,

the earliest date the tenancy could end is 30 June 2015. In this case, subsection 53(2) of the Act operates to automatically correct that date to 30 June 2015, the earliest effective date of the Notice.

Residential Tenancy Policy Guideline, “13. Rights and Responsibilities of Co-tenants” (Guideline 13) sets out the definition of a cotenant:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

In this case, the tenant and tenant RR both signed the same tenancy agreement. This means that they are presumed to be cotenants under that agreement.

In this case, a cotenant provided notice to the landlord to end the tenancy. Guideline 13 sets out the ramifications when a cotenant gives notice:

If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants.

As the tenant has given proper notice under the Act, the tenancy will end on 30 June 2015, the corrected effective date of the Notice. There is no requirement in the Act that a landlord provide a notice given by one co-tenant to the other co-tenant. The landlord is entitled to an order of possession for that date.

The tenant has claimed for compensation for the landlord's failure to provide a mail key. I find that the landlord has provided a mail key to the tenants at the beginning of the tenancy. I find that the tenant RR has the key. The matter of the mail key is between the tenants. The tenant is not entitled to compensation for the landlord's failure to provide a mail key.

The tenant has claimed for compensation for the landlord removing the child's car seat. I find on the basis of the parties' testimonies that the tenant RR has the car seat. I find on the basis of the text message sent to the landlord from the tenant RR that the tenant RR took the car seat from the rental unit. The return of the car seat is between the tenants and not a matter for the Residential Tenancy Branch. The tenant is not entitled to claim for compensation from the landlord for the car seat.

The tenant claims for the cost of her registered mailings. These costs are best characterized as “disbursements” incurred in the course of these proceedings. As well, the tenant has claimed for her time and stress in dealing with these proceedings.

Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional and includes disbursement costs. Furthermore, I find that

disbursements are not properly compensable pursuant to section 67 of the Act as the landlord's contravention of the Act is not the proximate cause of the expense.

I find that the tenant is not entitled to compensation:

- for the tenant's stress and lost time associated with filing this claim; and
- for disbursement costs as disbursements are not a cost that is compensable under the Act.

The tenant claims for compensation for the landlord entering the rental unit. As cotenants have equal rights under a tenancy agreement, for the purposes of determining the rights and obligations under the tenancy agreement, the tenants were equal in their rights to give permission to enter the rental unit. On the basis of the text messages from the tenant RR to the landlord, I find that on all occasions alleged the landlord had permission from the tenant RR to enter the rental unit. The tenant is not entitled to recover from the landlord for her entries to the rental unit.

Conclusion

The landlord is provided with a formal copy of an order of possession effective at one o'clock in the afternoon on 30 June 2015. 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.

The tenant's 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 11, 2015

Residential Tenancy Branch

