



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, ERP, RP

Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession based upon a 10 Day Notice to End Tenancy for Non-Payment of Rent and a monetary order. The other was one tenant's, JG, application for an order setting aside the notice to end tenancy and a repair order. All interested parties appeared and had an opportunity to be heard.

At the beginning of the hearing JG advised that she had moved out of the rental unit thereby rendering her application moot.

She had not filed or served any evidence in support of her application or in response to the landlord's application. The landlord had filed proof of service of his evidence packages on the tenants.

After a generous and reasonable discussion the parties were able to come to an agreement on all terms except one. The terms of the agreement are set out in the "Facts" section below.

The only issue on which the parties were not able to agree was the landlord's claim for the balance of the November rent. It was agreed that this dispute was only between the landlord and JG. A hearing was conducted on that issue only, with only those two parties testifying. At the end of that hearing I reserved my decision and advised the parties that they would be receiving a decision that included the terms of their agreement and my decision on the November rent and the disposition of the security deposit.

The facts as set out in this decision reflect the information given during the settlement discussion as well as the hearing portion of the proceedings.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for the balance of the November rent and, if so, in what amount?

Background and Evidence

This tenancy commenced May 1, 2014. There was a written tenancy agreement which named the tenants as co-tenants. The rental unit is a house divided into two living units. The tenants rented the entire house for a monthly rental of \$1950.00. Effective July 1, 2015 the rent was increased to \$1990.00. The monthly rent was due on the first day of the month. The tenants were responsible for the hydro, which remained in the name of the landlord. The arrangement was that the tenants paid the landlord \$150.00 a month towards the hydro account with an accounting of the actual hydro charges and the payments made by the tenants to be done at the end of every year. The tenants paid a security deposit of \$975.00.

The tenants brought in roommates. All four paid their share of the rent and the hydro payment to JG, who remitted the entire amount to the landlord.

There were some changes in the living arrangements over the course of the tenancy but by the beginning of September JG was living in the upstairs unit with her roommates and the tenant KS was living in the downstairs unit with his roommate.

KS and his roommate paid the September rent to JG as usual but she did not make any payment to the landlord.

On September 29, 2015 the landlord issued and posted a 10 Day Notice to End Tenancy for Non-Payment of Rent. In October and November KS and his roommate paid \$975.00 each rent for rent for the lower unit.

In the hearing the parties agreed that:

- The existing tenancy will end and the landlord will be granted an order of possession, effective two days after service, of the upstairs unit only.
- KS, his roommate and the landlord will enter into a new tenancy agreement for the downstairs unit. The monthly rent will continue to be \$975.00 due on the first day of the month. The tenants will be responsible for the hydro and gas charges for the unit but the accounts will remain in the landlord's name. The parties agreed that they would try to negotiate a payment arrangement for these utilities similar to the arrangement for payment of hydro that was in place with the first tenancy agreement.
- JG acknowledged responsibility for the full September rent in the amount of \$1990.00 and a portion of the October rent in the amount of \$990.00 for a total of \$2980.00. The landlord agreed that this was the rent owed for September and October.
- Although at law co-tenants are jointly and severally responsible for the entire amount of the rent the landlord indicated that as KS had paid his portion of the rent to JG he only wanted a monetary order against JG. JG agreed with this arrangement.

- The parties agreed that the September hydro charges had been paid. JG said she was solely responsible for the October hydro payment of \$150.00.

With regard to the November rent the landlord and JG both testified that towards the end of October they were trying to work out a settlement. They agreed to meet on October 24 but that meeting never took place. Most of their communication was through a mutual friend, who is also a neighbour and occasional handyman for the landlord.

JG testified that although her original plan had been to continue the tenancy if possible events at the house led her to decide that she should move out.

The landlord testified that on October 28 the mutual friend let him know that JG was planning on moving out and on October 31 he let the landlord know that JG had moved out. The landlord immediately arranged for the locks to be changed at the request of KS and his roommate.

JG testified that in addition to telling the mutual friend that she was moving out, she left multiple telephone messages for the landlord which were not returned. She did not have access to e-mail until she returned to work on the Monday.

The landlord testified that he has not been to the rental unit since then. He has not taken any steps to get the upstairs unit ready to rent nor has he taken any steps to rent the unit. He testified that he was not really sure of his legal rights and so decision to wait until he knew the outcome of this dispute resolution proceeding.

Analysis

The *Residential Tenancy Policy Guidelines*, available on-line at the Residential Tenancy Branch web site, provide succinct summaries of the legislation and the common law applicable to residential tenancies in British Columbia. Those guidelines will be referenced in the course of this decision.

As explained in *Residential Tenancy Policy Guideline 3: Claims for Rent and Damages for Loss of Rent*, if a month-to-month tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. However, section 7(2) of the *Residential Tenancy Act* requires the landlord to make all reasonable efforts to mitigate the loss by attempting to re-rent the unit as soon as possible.

Although the tenant did not give written notice to end tenancy as required by the legislation (a text message does not meet the requirement of the *Act*) and by her actions led the landlord to believe, almost to the end of October, that she would not be vacating the unit at the end of the month, the landlord did have notification that the tenant had vacated the property on October 31

and did retake possession of the unit when he had the locks changed. If the landlord had acted immediately to clean and advertise the unit he may have been able to find a suitable tenant effective November 15. Accordingly, I award the landlord the sum of \$507.50, one half of the unpaid November rent for the upstairs unit.

As explained in *Residential Tenancy Policy Guideline 13: Rights and Responsibilities of Co-tenant*, not only are co-tenants jointly and severally responsible for any damages or debts relating to the tenancy but any one co-tenant can agree in writing that the landlord may keep all or any part of the security deposit or pet damage deposit or may apply for arbitration for return of the deposit. The other co-tenants are bound by that tenant's actions and any accounting between the tenants is between them. Accordingly, the usual disposition of the security deposit paid by the tenants at the start of this tenancy would be to apply the entire amount to the outstanding rent and the tenants would have to settle up between themselves.

However, as set out above, the landlord agreed to waive his rights to seek payment from KS as well as JG. The other unusual circumstance is that KS is going to continue his tenancy with the landlord under a new tenancy agreement. JG indicated her desire to have her half of the security deposit applied to her indebtedness.

Given the particular facts of this situation and the arrangements agreed to by the parties I order that one half (\$487.50) of the security deposit currently held by the landlord be transferred to the new tenancy agreement between the landlord, KS and KS's roommate, and I order pursuant to section 72(2) that the balance of the security deposit held by the landlord, namely \$487.50, be applied to the arrears of rent owed by the tenant JG.

Finally, as the landlord was successful on his application I find that he is entitled to reimbursement from the tenants JG and JS for the \$50.00 fee he paid to file his application. In line with the reasoning set out above I order that the fee be split between the two tenants. Accordingly, the sum of \$25.00 will be added to the monetary order that will be made against JG and a monetary order in the amount of \$25.00 will be made against KS.

In summary then, I grant the landlord a monetary order against JG in the sum of \$3662.50 calculated as follows: \$3487.50 for unpaid rent for September, October and November; \$150.00 for the October hydro payment; and \$25.00 for a portion of the filing fee paid by the landlord. Pursuant to section 72(1) I order that the landlord may retain a portion of the security deposit, namely \$487.50, in partial satisfaction of this claim and I grant the landlord an order under section 67 for the balance due of \$3175.00

Conclusion

As a result of the agreements and decisions outlined above:

- a. An order of possession for the upstairs unit only, effective two days after service, has been granted to the landlord. If necessary, this order may be registered in the Supreme Court and enforced as an order of that court.
- b. A monetary order against the tenant JG in the amount of \$3175.00 has been granted to the landlord. If necessary this order may be filed in Provincial Court and enforced as an order of that court.
- c. A monetary order against the tenant KS in the amount of \$25.00 has been granted to the landlord. If necessary this order may be filed in Provincial 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: November 27, 2015

Residential Tenancy Branch

