



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Double QQ Enterprises Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPR, MNR, MNSD, MNDC, FF
 Tenants: DRI, CNR, MNDC, RP, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought to dispute an additional rent increase; to cancel a notice to end tenancy; an order to have the landlord complete repairs; and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the male tenant.

The tenant testified the landlord was served with his evidence of a receipt issued on July 6, 2015 but that he did not provide a copy to the Residential Tenancy Branch. The landlord's agent confirmed that he had received this evidence.

As the landlord had received this evidence I ordered the tenant could submit this evidence to the Residential Tenancy Branch by fax no later than the end of business on December 14, 2015. I provided the tenant with the fax number and advised he could either find a fax machine that he could use himself or he could take it to his local Service BC office and have them fax it to me.

The tenant submitted this document prior to the end of business on December 14, 2015 as ordered.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent and the continuation of this tenancy is not sufficiently related to the tenants' claim for compensation or to have the landlord make repairs. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss the tenants' claim for compensation and for repairs. I grant the tenants leave to re-apply for these other claims.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to cancel a rent increase; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 41, 46, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began on August 1, 2015 as a month to month tenancy; that rent is due on the 1st of each month; that the tenant's paid a security deposit of \$275.00; and that there was no written tenancy agreement.

The landlord submits the rent agreed upon was \$600.00 per month and the tenants submit that the agreed upon rent was \$550.00.

The landlord submits that originally the tenants viewed a different rental unit for which the rent was \$550.00 but that this unit was not available and so they were shown another unit (dispute address) that was to be rented for \$600.00 per month.

The owner of the property did not attend the hearing but submitted a letter stating that the tenants attended the property the last week in July 2015 at which time the tenants were given a "quote for the unit" - \$550.0 with a security deposit of \$275.00. The landlord notes this was for a different unit than was not rented by the tenants.

She goes on, in her letter, to state that on July 31, 2015 they returned and viewed the subject rental unit at which time they were told the price would be \$600.00 plus a security deposit of \$300.00. The landlord's letter goes on to say the tenants agreed to \$600.00 per month but that for the month of August 2015 rent would be reduced by \$75.00 because the tenant did some work in the rental unit.

The landlord has submitted a hand written receipt into evidence. This receipt dated July 31, 2015 is made out to the male tenant and states:

“This replaces temp. rec for rent paid for Aug 1/15 on suite 206. & S/D Tenant is now renting Suite 203 for \$600 month. Diff in rent 50.00. Diff in s/d 25.00. Paid \$550.00 rent. Paid \$275.00 s/d. Paid diff. 75.00 – instead he replace lock/etc.”

The landlord submits this receipt represents that the tenants did some work to the rental unit for which they were compensated \$75.00 which was applied \$50.00 to rent for the month of August and \$25.00 to the security deposit.

The landlord submits this shows that the tenants had agreed to the increased rent and security deposit on July 31, 2015. I note the receipt is not signed by either of the tenants. The tenant testified, during the hearing, that he had not seen this receipt until he received in the landlord's evidence.

The landlord has also submitted into evidence a handwritten letter from the landlord's agent RP. In this letter she states that the tenants were shown unit #206 but that the original occupant from that unit decided to not move out so she showed the tenants unit #203.

The agent RP states in this statement that the male tenant knew the rent for #203 was \$600.00 and he had agreed to it. She goes to say that “it is now clear that his wife did not agreed nor did they put the hydro for suite 203 in their names.” [reproduced as written] No explanation was provided as to why RP thought this statement.

The receipt the tenant submitted into evidence was dated July 6, 2015 and notes that the landlord's agent RP received payment of \$825.00 for August 1, 2015 rent plus a security deposit. The receipt further outlines that rent is \$550.00 and the security deposit was \$275.00. The receipt was originally written stating that it was for unit #206 but this unit number is stroked out and replaced with unit #203.

The landlord submits that both the owner and the agent DL had attempted to discuss these matters with the tenants including having the tenants sign a tenancy agreement beginning in September. The landlord submits that that the tenants refused to do so.

The landlord submits that the tenants have failed to pay the additional \$50.00 for the months of September, October, November, and December 2015. As a result, the landlord, on October 13, 2015 issued a 10 Day Notice to End Tenancy for Unpaid Rent with an effective vacancy date of October 23, 2015 due to unpaid rent in the amount of \$150.00.

The tenants submitted their Application for Dispute Resolution seeking to cancel the Notice on October 14, 2015. The tenants submit that they had agreed to \$550.00 per month for rent and that the additional \$50.00 per month the landlord seeks amounts to an unallowable rent increase.

Analysis

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regards to the claim for unpaid rent the burden of proving any amount of rent was not paid is predicated on the amount of rent that was agreed to at the start of the tenancy. As such, as the landlord is making the claim for unpaid rent the burden rests with them to establish the amount of rent that was agreed upon and how much was unpaid at the time that the 10 Day Notice to End Tenancy for Unpaid Rent was issued.

Section 13 of the *Act* stipulates that the landlord is required to prepare a tenancy agreement in writing and that they must, within 21 days after the parties enter into a tenancy agreement, provide the tenant with a copy of the tenancy agreement.

When two parties provide equally plausible but differing accounts of an agreement, the party with the burden must provide additional evidence to establish their position. In this case, the landlord has failed to provide a copy of a tenancy agreement to confirm the rent amount to be \$600.00, as the landlord failed to have the tenants sign one prior to the start of the tenancy.

From the submissions of both parties I find the tenants were shown a rental unit for which the landlord sought \$550.00 per month. I accept that this rental unit was not the rental unit that the parties eventually agreed to rent.

I also find the landlord has established that the tenants were informed that the amount of rent sought by the landlord for this different unit was \$600.00. However, I am not satisfied that the parties came to an agreement regarding a difference in the amount of rent the tenants would pay for the unit in which they now reside.

I find the issuance of a secondary receipt for the payment of work completed by the tenant that has additional comments on it regarding the changed amount of rent does not provide any confirmation that the tenants agreed to higher rent, particularly when it was unsigned by either one of the tenants.

As such, I find the rent agreed to by the parties was to be \$550.00 and that the security deposit is \$275.00 as stipulated by the tenants.

Subsequently, I find the landlord cannot increase the rent by \$50.00 per month in part because a landlord is not allowed to impose a rent increase until at least 1 year after the start of a tenancy and in part because the allowable rent increase for 2015 was 2.5% or in the case before me \$13.75 per month.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

As I have determined the rent for this tenancy is \$550.00, I find that on the date the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent there was, in fact, no rent owing. As a result, I find the landlord does not have authority to end the tenancy for the non-payment of rent, pursuant to Section 46.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety, without leave to reapply.

I also order the 10 Day Notice to End Tenancy for Unpaid Rent issued on October 13, 2015 is null and void and the tenancy will continue in full force and effect.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by them for this application. I order the tenants may deduct this amount from a future rent payment, pursuant to Section 72(2)(a).

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: December 15, 2015

Residential Tenancy Branch

