



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 529114 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, MT, MNR, ERP, RPP and O

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied:

- to set aside a Notice to End Tenancy for Cause;
- for more time to apply to set aside a Notice to End Tenancy;
- for an Order requiring the Landlord to make repairs/emergency repairs;
- to recover the cost of emergency repairs; and
- for "other".

The female Tenant stated that on February 01, 2016 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Property Manager. The Property Manager acknowledged receipt of these documents.

On February 10, 2016 the Tenants submitted ten pages of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was personally served to the Property Manager on February 10, 2016. The Property Manager stated that she received all of the evidence in the Tenants' package with

the exception of two letters from the Regional District, dated January 12, 2016.

On February 12, 2016 the Tenants submitted 13 photographs and a medical bracelet to the Residential Tenancy Branch. The female Tenant stated that this evidence was personally served to the Property Manager on February 13, 2016. The Property Manager stated that she did not receive this evidence.

The evidence the Landlord acknowledged receiving for the Tenants was accepted as evidence for these proceedings. The parties were advised that the documents/photographs the Landlord did not acknowledge receiving would not be accepted as evidence but that I would consider adjourning the hearing if the Tenants introduced those documents/photographs during the hearing and I considered it necessary to view the documents/photographs. The Tenants did not discuss the documents/photographs during the hearing and I did not, therefore, adjourn the hearing for the purposes of having the documents/photographs "re-served" to the Landlord.

On March 03, 2016 the Tenants submitted five pages of evidence and six photographs to the Residential Tenancy Branch. The female Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord it was not accepted as evidence for these proceedings.

On March 01, 2016 the Landlord submitted 19 pages of evidence to the Residential Tenancy Branch. The Property Manager stated that this evidence was personally served to the female Tenant on March 02, 2016. The female Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenants have identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

I determined that it was appropriate to consider the most urgent issues in dispute, which include the application to set aside the Notice to End Tenancy for Cause; the application for more time to apply to set aside a Notice to End Tenancy; and the application for emergency repairs, which was limited to the claim to repair the front door.

The balance of the issues in dispute is dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?
Should the Tenant be granted more time to apply to set aside a Notice to End Tenancy?
Is there a need to order the Landlord to repair the front door?

Background and Evidence

The Landlord and the Tenants agree that:

- the male Tenant's mother was living in this rental unit prior to the start of this tenancy;
- the male Tenant was living with his mother and remained in the rental unit after she ended her tenancy;
- the female Tenant was living in a different rental unit in this residential complex prior to the start of this tenancy;
- the monthly rent was \$925.00, due by the first day of each month;
- a One Month Notice to End Tenancy for Cause was personally served to the female Tenant on January 14, 2016;
- the One Month Notice to End Tenancy names both Respondents;
- the One Month Notice to End Tenancy declared that the Tenant must vacate the rental unit by February 15, 2016;
- the reasons cited on the Notice to End Tenancy for ending the tenancy were that the tenant is repeatedly late paying rent; that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the tenant or a person permitted has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and there has been a breach of a material term of the tenancy agreement that was not corrected after written notice to do so.

The Property Manager stated that when the female Tenant moved into the rental unit the Landlord and the Tenant signed a new tenancy agreement that named only the female Tenant. The female Tenant stated that she believes there is a written tenancy agreement that names both Tenants. Neither party submitted a copy of the tenancy agreement for this tenancy.

The female Tenant stated that shortly after she received the One

Month Notice to End Tenancy she filed an Application for Dispute Resolution disputing the Notice, although she cannot recall the file number nor can she recall when she filed that Application for Dispute Resolution. She stated that the Residential Tenancy Branch did not contact her to advise there were papers to serve nor did the Residential Tenancy Branch advise her that a hearing had been scheduled for March 04, 2016.

Residential Tenancy Branch records show that the Tenants did file an application to dispute a One Month Notice to End Tenancy for Cause on January 19, 2016 and that they were unable to contact the Tenants regarding service of documents for a hearing that had been scheduled for March 04, 2016.

In support of the application to end the tenancy on the basis that the Tenant is repeatedly late paying rent, the Property Manager stated that the Landlord has received the following payments for this tenancy:

- August 04, 2015 - \$400.00 for a security deposit (cash)
- August 10, 2015 - \$525.00 in rent (cheque)
- November 04, 2015 - \$1,850.00 in rent (cheque)
- November 25, 2015 - \$925.00 in rent (cheque)

The Landlord submitted a “rent payment” ledger that corroborates the testimony regarding the aforementioned payments. The Property Manager stated that payments shown on the ledger that were made prior to the start of this tenancy on August 01, 2015 relate to payments that were made by the male Tenant’s mother for her previous tenancy.

The Property Manager stated that after this tenancy began a pet damage deposit of \$435.50 was paid over a period of three months, although those payments are not reflected on the “rent

payment" ledger.

The female Tenant stated that the following payments were made during this tenancy:

- August 02, 2015 - \$400.00 in rent (cash)
- October 20, 2015 - \$1,850.00 in rent (cash)
- November 01, 2015 - \$1,850.00 in rent (cheque)
- November 20, 2015 - \$925.00 in rent (cheque)

The female Tenant stated that when she moved from her previous rental unit in this residential complex she had a credit of \$1,850.00 that was applied to her new tenancy for rent for August and September of 2015.

The Property Manager stated that when the female Tenant's previous tenancy in this residential complex ended her rent was in arrears by \$875.00. She stated that her security deposit of \$437.50 from her previous tenancy was applied to the outstanding debt, leaving a balance of \$437.50 till due from her previous tenancy. She stated that there was no credit applied to the new tenancy from the female Tenant's previous tenancy.

The female Tenant stated that she had a text message from a previous manager that declared her pet damage and security deposit of \$925.00 was transferred to from her old tenancy to her new tenancy and that a "credit" of \$925.00 was transferred to this tenancy. She stated that she did not submit this text message in evidence because she did not have time.

The female Tenant was asked to read the text message from the previous manager. The Tenant attempted to paraphrase the text message at which point she was asked if she is actually in possession of the text message. She replied that the text

message had not been sent directly to her; that the text message had been sent to a relative; and that the relative told her about the content of the message.

The Tenants submitted a receipt for the \$400.00 payment, dated August 02, 2015, which indicates the payment is for August rent.

The female Tenant stated that she had a receipt for the \$1,850.00 payment she allegedly made on October 20, 2015, although she cannot locate that receipt. The Property Manager stated that she has records of other receipts issued for cash payments but she does not have a receipt that shows a cash payment of \$1,850.00 was made on, or about, October 20, 2015.

The Witness for the Tenant, who is the female Tenant's mother, stated that she observed her daughter give the Landlord a cheque for \$1,850.00 on November 01, 2015 and a cheque for \$925.00 on November 20, 2015.

The Landlord and the Tenants agree that no rent has been paid in December of 2015, January of 2016, February of 2016, or March of 2016.

There was considerable testimony relating to other issues arising during this tenancy which the Landlord believes are grounds to end this tenancy. As I have determined that this tenancy will be ending pursuant to section 47(1)(b) of the *Act*, there is no reason to consider whether the Landlord has additional reasons to end this tenancy. The other alleged reasons for ending the tenancy that were raised during the hearing are not, therefore, being recorded in this decision.

The Tenants are seeking an Order requiring the Landlord to repair the front door. The male Tenant stated that an unknown person

attempted to enter their rental unit and that the door no longer closes properly unless the deadbolt is engaged. The Property Manager stated that the Landlord intends to repair the door they simply have not yet engaged a contractor for the repair.

Analysis

Section 66(1) of the *Act* authorizes me to extend the ten day time limit for applying to dispute a One Month Notice to End Tenancy. As the Tenants did file an Application for Dispute Resolution within ten days of receiving the One Month Notice to End Tenancy dated January 14, 2016; those proceedings did not proceed due to a communication problem between the Residential Tenancy Branch and the Tenants; and the Tenants filed a second Application for Dispute Resolution on February 01, 2016, I find it reasonable to extend the deadline for disputing this One Month Notice to End Tenancy. I therefor grant the Tenants' application for more time to apply to dispute a Notice to End Tenancy.

I find that the Tenant has submitted insufficient evidence to establish that she had a "credit" of \$1,850.00 applied to her new tenancy from her previous tenancy in this residential complex. In reaching this conclusion I was heavily influenced by absence of evidence that corroborates her testimony.

I find that the female Tenant's testimony about a text message regarding this alleged "credit" was inconsistent and not highly credible. At one point in the hearing she testified that she was in possession of the text message and she subsequently acknowledged that she had simply been informed of the content of the text message.

I favour the testimony of the female Tenant, who stated that she

paid \$400.00 in rent on August 02, 2015, over the testimony of the Property Manager, who stated that the \$400.00 that was paid in August was for a security deposit. In reaching this conclusion I was heavily influenced by the receipt that was submitted in evidence, which indicates the payment was made for August rent.

I find that the receipt of August 02, 2015 corroborates the Property Manager's testimony that a "credit" had not been applied to the Tenant's rent for August and September of 2015. The receipt declares that after the payment of \$400.00 was made rent of \$525.00 is still due.

As the Tenants have failed to establish that a credit of \$1,850.00 was applied to this tenancy at the start of the tenancy, I find that rent was not paid when it was due on August 01, 2015 or September 01, 2015.

On the basis of the evidence of the Landlord, I accept that rent was paid for August, in full, after the Landlord received the cheque for \$525.00 on August 10, 2015.

I find that the Tenants submitted insufficient evidence to establish that they paid \$1,850.00 in rent, in cash, on October 20, 2015. In reaching this conclusion I was heavily influenced by the Tenants' inability to produce a receipt for this rent payment and by the Property Manager's testimony that this payment was not received and the Landlord has no record of issuing a receipt for this payment.

Even if the Tenants had been able to establish that they paid \$1,850.00 in rent on October 20, 2015, I would conclude that rent was not paid when it was due on October 01, 2015. As the Tenants have not established this rent was paid, I find that the Tenants cannot rely on this alleged payment as proof they paid

their rent when it was due on November 01, 2015.

On the basis of the testimony of the female Tenant, the testimony of the Witness for the Tenant, and the cheque submitted in evidence, I find that the Tenants paid rent of \$1,850.00, on November 01, 2015. I therefore cannot conclude that rent for November was not paid when it was due on November 01, 2015.

Although the Landlord's payment record shows the \$1,850.00 payment was not made until November 04, 2015, I find that the payment record does not necessarily accurately reflect the date all payments were received by the Landlord. In reaching this conclusion I was heavily influenced by the receipt that shows the Landlord received a \$400.00 payment on August 02, 2015 yet the Landlord's payment record shows that it was received on August 04, 2015. I therefore cannot rely on the payment record to determine whether the \$1,850.00 payment was made on November 04, 2015 or November 01, 2015.

As the Tenants' rent was in arrears by over \$925.00 on November 04, 2015, I find it reasonable for the Landlord to apply \$925.00 of the rent paid in November to rent due for November of 2015 and the remaining \$925.00 of the rent paid in November to the arrears. Given that this payment was made at the beginning of the month and rent was overdue, I find that the Tenants could not reasonably expect this payment to be considered a rent payment for December of 2015.

On the basis of the undisputed evidence, I find that the Tenants paid \$925.00 in rent during the latter portion of November. Although the Tenants rent was still in arrears I find it reasonable for the Tenants to assume that this rent would be applied to rent due for December of 2015. I therefore cannot conclude that rent was not paid when it was due on December 01, 2015.

On the basis of the undisputed evidence, I find that no rent has been paid since November of 2015. I therefore find that the Tenants did not pay rent when it was due on January 01, 2016.

Section 47(1)(b) of the *Act* authorizes a landlord to end a tenancy if a tenant is repeatedly late paying rent. As I have concluded that the Tenants were late paying rent in August of 2015, September of 2015, October of 2015, December of 2015, and January of 2016, I find that the Landlord has established grounds to end this tenancy pursuant to section 47(1)(b) of the *Act*.

On the basis of the undisputed evidence, I find that the Tenants were served with a One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Act*. As the Landlord has establish grounds to end this tenancy pursuant to section 47(1)(b) of the *Act* and the Tenants were served with a One Month Notice to End Tenancy for Cause, I dismiss the Tenants application to set aside the One Month Notice to End Tenancy that is dated January 14, 2016.

As I have dismissed the Tenants' application to cancel the One Month Notice to End Tenancy, I grant the Landlord an Order of Possession, pursuant to section 55 of the *Act*.

As the door to the rental unit can be secured with a deadbolt, I find there is no urgent need to repair the door to the rental unit. As there is no urgent need to repair the door and the tenancy is ending, I find there is no need to issue an Order requiring the Landlord to repair the door. I therefore dismiss the Tenant's application for a repair Order.

Conclusion

The Landlord is granted an Order of Possession that is effective

two days after it is served upon the Tenants. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, 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: March 15, 2016

Residential Tenancy Branch