



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, OLC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel the Two Month Notice to End Tenancy for Landlords Use of the Property; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement.

The parties and an advocate for the tenant attended the conference call hearing. The parties gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The parties provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the landlord confirmed that she had withdrawn the Two Month Notice to End Tenancy. The tenant agreed that the Two Month Notice has been withdrawn and therefore withdraws his application to cancel that Notice.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

This tenancy was due to start on December 01, 2015 for a fixed term tenancy which expires on May 30, 2016 with the option to continue as a month to month tenancy. The parties agreed the tenant was not able to take possession of the unit until December 05, 2015. Rent for this unit is \$775.00 per month due on the 1st of each month. The tenant paid a security deposit of \$387.50 at the start of the tenancy.

The tenant testified that he was due to move into the unit on December 01, 2015; however, the landlord said she could not move out until December 05, 2015 as the unit she was going to live in at the back was still occupied by other tenants that had not yet moved out. The landlord asked the tenant to go and stay somewhere else and she would reimburse the tenant some of the rent. The tenant was not able to move in until December 05, 2015 but had paid rent of \$775.00 for the entire month of December. The tenant seeks to recover a prorated rent for five days of \$125.00.

The tenant testified that the landlord has not complied with the *Act* by returning money to the tenant for rent when he could not take possession of the rental unit; the landlord has not complied with the *Act* when she issued the tenant with the Two Month Notice to End Tenancy when this is a fixed term tenancy; and the landlord has invaded the tenant's privacy by entering the tenant's unit without proper notice.

The tenant testified that the landlord has entered his unit when he has not been there. The tenant testified that the landlord has provided some written notices of entry by posting them on his door but still enters 24 hours later. The tenant referred to the written notices provided in documentary evidence. These notices related to when the landlord entered to remove one of the two fridges and a closet. There was another notice to enter for an inspection last month and a second notice for inspection was issued two days ago and posted to the tenant's door. The tenant testified that the landlord has entered his unit on other occasions without written notice as his furniture and belongings have been moved out of place.

The landlord disputed the tenant's claim that he is owed \$125.00 for prorated rent. The landlord testified that at the time the tenant applied to move into the unit, the landlord told him it would be a later move in probably not till December 05, 2015. They signed the lease for December 01, 2015 and the tenant paid December's rent of \$775.00 and the security deposit. The landlord agreed the tenant did not move in until December 05, 2015.

The landlord disputed the tenant's claims that she has not provided 24 hours written notice to entry the unit or that she has entered his unit without written notice. The landlord testified that she gave the tenant written notice for monthly inspections, again when she went into remove the second fridge that was not included in his lease and again when she went to change a closet. The landlord agreed most of the notices were posted on the door and she entered 24 hours later but testified that some notices were handed to the tenant in person.

The tenant disputed the landlord's testimony and testified that the monthly inspections only started last month and a notice for that was put on the door of the unit; however, the landlord entered 24 hours later. No notices were given for any inspections prior to the one issued last month. The tenant agreed that if the landlord does come to the door to do an inspection, if the tenant is at home he will let her enter the unit.

The landlord testified that early in February, 2016 she heard a lot of noise coming from the tenant's unit. When she went to the door the tenant was slamming the door and arguing with someone else. This resulted in the door hinges coming off. The tenant was told the landlord needed to repair the door hinges as the door would not close properly. The landlord agreed she stood in the doorway to repair the hinges but the tenant pushed her out and attempted to close the door. The door would not close because of the hinges. The landlord testified that as this repair was required to protect her property she did not give notice and did not really enter the unit but rather only stood in the doorway.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenant's application for a Monetary Order for \$125.00; if the tenant has paid rent for the month of December and the tenancy was due to start on December 01 then if the tenant was unable to take possession of the unit on December 01 due to the landlord not having moved out of the unit, then the tenant is entitled to recover any rent paid for the days he was unable to live in the unit.

I am satisfied from the evidence before me that the tenant was not able to take possession of the unit until December 05, 2015. Consequently, the tenant is entitled to recover rent from December 01 to December 04, 2015 to an amount of \$25.00 per day or **\$100.00** in total. A Monetary Order has been issued to the tenant pursuant to s. 67 of the Act for this amount.

With regard to the tenant's application for an Order for the landlord to comply with the Act, regulation or tenancy agreement; I refer the parties to s.29 of the Act which states:

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

While I accept that the landlord has provided some written notices of entry, if these were posted to the tenant's door then s. 90(c) of the Act states:

90 *A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents] is deemed to be received as follows:*

(c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;

Consequently, if the landlord posts a notice of entry to the tenant's door then the landlord must allow three days for the notice to be deemed served and then a further 24 hours before entry can be made.

A landlord must not enter a tenant's unit for any other purpose other than one stated on a notice of entry unless an emergency exists to protect life or property.

To this end I Order the landlord to comply with s.29 of the *Act* regarding entry to the tenant's rental unit.

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$100.00**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court. The tenant has a further option of reducing their next rent payment by the amount indicated above pursuant to s. 72(2)(a) of the *Act*.

I Order the landlord to comply with s. 29 of the *Act* with regard to entry to the tenant's rental unit.

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 16, 2016

Residential Tenancy Branch