



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHERLOCK ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – DRI, CNC, ERP, LRE

For the landlord – OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to dispute an additional rent increase; to dispute a One Month Notice to End Tenancy for cause, for an Order for the landlord to make emergency repairs for health or safety reasons; and to suspend or set conditions on the landlord's right to enter the rental unit. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and two agents for the landlord (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. I am satisfied that the landlord and tenant 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.

Preliminary Issues

I have determined that the portion of the tenant's application dealing with any claim other than the request seeking cancellation of the One Month Notice to End Tenancy for cause and to dispute an additional rent increase are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules of Procedure, I have severed the tenant's application and dismissed that portion of the tenant's application for emergency repairs and to suspended or set conditions on the landlord's right to enter the rental unit.

Issue(s) to be Decided

- Has the landlord increased the rent and if so is the tenant entitled to dispute an additional rent increase?
- Is the tenant entitled to dispute the One Month Notice to End Tenancy?
- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on February 01, 2016 for a fixed term that is due to end on August 01, 2016. Rent for this unit is \$900.00 per month due on the 1st of each month. The tenancy agreement also has provision in it to raise the rent by \$100.00 per month if another occupant resides in the rental unit. The tenant paid a security deposit of \$425.00 on January 30, 2016.

The landlord's application

10 Day Notice – the landlord testified that the tenant paid \$900.00 for her rent for June; however, the tenant has allowed her boyfriend to move into the unit without the landlord's permission since February, 2016. As the tenancy agreement has a clause that stipulates that the rent will go up by \$100.00 a month for an additional occupant then the tenant owes \$500.00 from February to June, 2016. The tenant also owes other money unrelated to rent, for plate glass that was damaged on move in and for furniture the tenant agreed to purchase that was in the unit at the start of her tenancy.

Due to this the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent. This was posted to the tenant's door on June 03, 2016 and stated that the tenant owed rent of \$632.00 and must pay the rent within five days, or dispute the Notice or the tenancy will end on June 13, 2016. The landlord testified that the tenant has not paid the outstanding rent and did not file an application to dispute the Notice. The landlord therefore seeks an Order of Possession to be effective as soon as possible.

Monetary Order for unpaid rent – the landlord seeks to recover the unpaid rent of \$500.00 from February to June, 2016 and testified that no rent has been paid for July, 2016. The landlord therefore seeks a Monetary Order for \$1,500.00.

Monetary Order for money owed or compensation for damage or loss – the landlord testified that when the tenant moved into the unit a previous tenant had left some furniture and the tenant agreed to buy this from the landlord for \$200.00. This was a verbal agreement between them. The tenant's movers also broke a plate glass window and the tenant agreed to pay for this damage which cost \$427.01 to replace (a copy of the invoice has been provided in documentary evidence). The tenant did make one payment of \$85.00 and now owes \$342.01 for the plate glass. The tenant made arrangements for a women's society to pay for this damage but the tenant has not passed that money on to the landlord. The landlord seeks to recover the total costs owed of \$542.01.

One Month Notice – The landlord testified that the tenant has engaged in late night parties, loud noise and disturbances and arrivals to her unit of up to 10 people late at night which has caused disturbances. Furthermore, the tenant has been smoking on her balcony when her tenancy agreement stipulates that this is a non-smoking building. The tenant has thrown lit cigarettes into the bushes below which constitutes a fire hazard for the building. The landlord referred to compliant letters from other tenants, incident reports sent to the tenant concerning disturbances and a Caution Notice sent on May 05, 2016. The landlord testified that another tenant also called the police due to excessive late night noise. A tenant has complained about fighting and a domestic dispute between the tenant and another person. The landlord testified that the disturbances from the tenants unit have occurred as late as 3.00 a.m. and this has significantly disturbed other tenants and the landlord's agent.

The landlord testified that due to the many disturbances the tenant was served with a One Month Notice to End Tenancy on May 26, 2016 in person. This was duly witnessed by both agents of the landlord. The Notice has an effective date of June 30, 2016 and provided the following reasons to end the tenancy:

- 1) *The tenant or a person permitted on the residential property by the tenant has*
 - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- 2) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (i) *Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
 - (ii) *Jeopardized a lawful right or interest of another occupant or the landlord*

The landlord testified that they have checked boxes concerning illegal activities in error on the Notice as there are no illegal activities occurring other than late night noise disturbances. The landlord seeks an Order of Possession for cause.

The tenant's rebuttal

The tenant disputed the landlord's claims that her boyfriend has moved into her unit. The tenant testified that her boyfriend lives somewhere else but as the tenant has a nine month old baby her boyfriend (who is not her baby's father) comes to help the tenant out each day with things like doing her laundry and getting groceries. The tenant testified that her boyfriend has lived at his own unit for the last six months but on average he comes to the tenant's unit every other day as the tenant has problems with her baby so he comes to check on them. The tenant testified that he will spend the night at her unit as her guest and in June he probably spent three weeks in her unit to help her out.

The landlord disputed this and testified that the tenant has given her boyfriend a key and he has been seen on the security screen at the building coming and going every day. When the tenant's boyfriend was approached and questioned by the landlord he informed the landlord that the tenant has allowed him to live in her unit and gave him a set of keys. He said he had moved in and was a tenant. He is often seen doing laundry in the building and often answers the tenant's door when the landlord knocks on the door.

The tenant testified that she gave her boyfriend permission to say he was a tenant as the landlord kept asking him and other family members what they are doing in the building. The landlord harasses the tenant's guests and yells at them to get out of the building. The tenant disputed that she owes rent of \$500.00 for an additional occupant from February to June, 2016. The tenant did agree that she did not file to dispute the 10 Day Notice as no rent is owed for June. The tenant agreed she has withheld her rent of \$900.00 for July, 2016 as she told the Ministry not to pay this to the landlord because of the hearing taking place.

The tenant disputed the landlord's claim for damage to the plate glass. The tenant testified that when she moved in on February 01, 2016 the landlord approached the tenant with a receipt for \$427.01 for this broken glass and told the tenant that her movers broke the glass. The tenant testified that as she had just moved in she did not want any trouble so she agreed to pay for this damage but informed the landlord that she would have to pay a little towards it each month. The tenant testified that the landlord did not provide any proof that the tenant's movers did break the glass. The tenant testified that a women's resource group said they would help her pay for the broken plate glass but they did not say how much they would provide. The landlord then contacted the tenant's social worker and said the tenant owed all this money. The landlord spoke to the tenant and said she would be deducting this money from the rent.

The tenant disputed the landlord's claim for the purchase of furniture. The tenant testified that when she moved into the unit the previous tenant had left some furniture and the landlord made the tenant agree to buy it. The tenant testified that she did not agree to pay \$200.00 for this furniture and said she could only afford \$85.00 which she paid. The landlord then gave the tenant a receipt for this amount. Now the landlord wants \$200.00 for the furniture but this was never agreed.

The tenant's application

Additional rent increase – the tenant testified that the landlord is trying to deduct money from her rent to pay for furniture and damages but is not allowed to do this and is trying to increase her rent for an additional occupant when the tenant's boyfriend does not live with her.

Cancel Notice to End Tenancy for cause – the tenant testified that the landlord does not treat the tenant like other tenants and harasses and yells at the tenant in the hallway in front of other tenants. Now all her neighbours know her business and the landlord has manipulated them into making complaints against the tenant.

The tenant testified that when she moved into the unit the landlord knew the tenant smoked and said it was alright to smoke on the balcony but not inside the unit. Now the tenant is being blamed for all the smoke and ash yet both neighbours on either side of the tenant also stand on their balcony's and smoke. The tenant testified that she does not throw her cigarettes into the bushes below and uses an ashtray.

The tenant testified that since she has moved into the building there are always police coming in. The tenant testified that she has never had a complaint from the police and when the landlord said the police had come to the tenant's unit, the landlord had seen that they actually went to another unit. The tenant testified that the landlord is making things up to make the tenant look bad so the landlord can evict her from the unit. The tenant agreed she did have one complaint about noise in February, 2016 but the noise was stopped straight away. The tenant seeks to have the One Month Notice cancelled and for her tenancy to continue.

The landlord testified that someone from the women's resource centre approached the landlord and said that the cheque they give the tenant will be increased to help pay for the furniture and broken glass; however, the tenant has kept that money and not passed it on to the landlord. The landlord asked the tenant where the money has gone. The tenant responded that she was getting \$330.00 from the women's resource centre and they increased it to \$450.00. The tenant informed the landlord that she could pay \$150.00 each month but the landlord wanted the whole amount. The tenant stated that she has now spent that money on other things. The landlord asked the tenant why she put on her application that she was a non-smoker. The tenant responded that the landlord filled the application in and the tenant just signed it. She did tell NM that she was a smoker and NM said she could smoke on her balcony.

The tenant asked the landlord why she called her mother pretending to be her social worker and called her social worker. The landlord responded that she did speak to the tenant's social worker as it was on their recommendation that she gave the tenant a unit in the building. The landlord testified that she did call the tenant's mother but did not say

she was the tenant's social worker; it was the tenant's mother who called the landlord by her social workers name. The tenant asked the landlord why she always accuses the tenant of having police come to her unit. The landlord testified that it was another tenant who called the police and they came out at 3.00 a.m. and it is likely that the tenant was drunk at the time so does not recall this.

The tenant presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's application for a Monetary Order for unpaid rent; I am satisfied from the evidence before me that the tenancy agreement allows the landlord to increase the rent by \$100.00 per month for an additional occupant. I must therefore determine whether or not the tenant's boyfriend has occupied the rental unit with the tenant since February, 2016. I have considered each parties arguments in this matter. The tenant agreed her boyfriend was frequently at the unit and did laundry and shopping and has stayed with the tenant overnight and for at least three weeks in June. The tenant provided an address for her boyfriend but provided no evidence to corroborate that he lived at that address by providing things such as utility bills in his name or a driving license to show he resided at another address. The landlord testified that they have seen the tenant's boyfriend in the building every day and that he has a key and he informed the landlord that he was a tenant. Consequently, I find I prefer the evidence of the landlord that the tenant's boyfriend has been occupying the rental unit since February, 2016 and as such the tenant's rent increased to \$1000.00 per month for this additional occupant.

As the tenant only paid \$900.00 per month I find the tenant owes \$500.00 from February to June, 2016. I further find the tenant did not dispute that she owed rent for July and therefore I find the landlord is also entitled to recover these rent arrears of

\$1,000.00. The total amount of rent arrears is **\$1,500.00** and the landlord has established a claim to recover this amount.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice is deemed to have been served on June 06, 2016, three days after it was posted on the tenant's door, pursuant to s. 90(c) of the *Act*. The tenant did not pay the outstanding rent within five days and the tenant did not apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As the Notice was deemed served on June 06, 2016 the effective date is amended to June 16, 2016 pursuant to s. 53 of the *Act*. As this date has since passed I grant the landlord an Order of Possession effective **two days** after service upon the tenant, pursuant to s. 55 of the *Act*.

As I have granted an Order of Possession based on the 10 Day Notice to End Tenancy for unpaid rent I am not required to deal with the landlord's claim for an Order of Possession for cause.

With regard to the landlord's application to recover money owed or compensation for damage or loss; the tenant testified that the landlords have provided no proof that her movers broke the plate glass yet the tenant did agree to pay for this damage on February 01, 2016 and arranged for a women's resource center to provide some funds to the tenant to help her pay for this damage. The tenant did not provide those funds to the landlord and has now spent them. I find that in agreeing to pay for the damage and arranging funds to help pay for the damage that it is sufficient evidence for me to decide that the tenant's movers did break the plate glass and as such I find the tenant is responsible to cover the cost of this repair of \$427.01. The landlord testified that the

tenant has paid \$85.00 toward this repair; however, the tenant testified that the \$85.00 was for the cost of the furniture. I therefore find in favor of the landlord's claim to recover **\$427.01** from the tenant for the damage to the plate glass.

With regard to the landlord's application for the cost of furniture; the tenant testified that she only agreed to pay \$85.00 for this furniture and not \$200.00, the landlord testified that they agreed the tenant would pay \$200.00. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails. The landlord has the burden of proof in this matter and as it is one person's word against that of the other then the burden of proof is not met. Consequently, I am not able to determine that the tenant agreed to pay \$200.00 for the furniture and as such I find the \$85.00 already paid by the tenant satisfies that debt. This section of the landlord's claim is therefore dismissed.

As the landlord's application has merit I find the landlord is also entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*.

With regard to the tenant's application to dispute an additional rent increase; as no rent increase has been given to the tenant other than the increase for additional occupants which is permitted under s. 13(2)(f)(iv) of the *Act* which states:

13 (2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(f) the agreed terms in respect of the following:

(iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies

The tenancy agreement allows the landlord to vary the rent for an additional occupant by \$100.00 and therefore this increase is not covered under s.40 (a) and 40(b) of the Act which states:

40 *In this Part, "rent increase" does not include an increase in rent that is*

(a) for one or more additional occupants, and

(b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [requirements for tenancy agreements: additional occupants].

Consequently, this section of the tenant's application is dismissed without leave to reapply.

With regard to the tenant's application to cancel the One Month Notice to End Tenancy for cause; as I have issued an Order of Possession to the landlord due to unpaid rent then the tenancy will end in accordance with that Order. Consequently, the tenant's application to cancel the One Month Notice has no further force or effect and no decision is required from me concerning this Notice. This section of the tenant's application is therefore dismissed.

Conclusion

The tenant's application is dismissed in its entirety. As the tenancy will end the remaining sections of the tenant's application not heard today are also dismissed without leave to reapply.

The landlord has been issued an Order of Possession effective **two (2) days** after service upon the tenant pursuant to section 55(1) of the Act. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlord then the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$2,027.01**. This Order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the tenant fails to comply with the Order.

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: July 12, 2016

Residential Tenancy Branch