



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: CNL, CNR, OLC RP

Landlord's application: OPR, OPL, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The tenants and the landlord called in and participated in the hearing. The parties exchanged documents before the hearing. The landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent and a two month Notice to End Tenancy for landlord's use of the rental property. The tenant applied to cancel both Notices and requested repairs. The landlord applied for an order of possession and a monetary order for unpaid rent.

Issue(s) to be Decided

Should the 10 day Notice to End Tenancy for unpaid rent dated June 4, 2016 be cancelled?

Should the two month Notice to End Tenancy for landlord's use dated June 4, 2016 be cancelled?

Is the landlord entitled to an order of possession pursuant to either Notice to End Tenancy?

Should the landlord be ordered to make repairs?

Background and Evidence

The rental unit is a basement suite in the landlord's house in Vancouver. The landlord did not prepare a written tenancy agreement. The tenancy began in January, 2011. According to the landlord the monthly rent is \$925.00 and he collected a security

deposit of \$450.00 at the start of the tenancy. The landlord said that the rent was actually \$900.00 and there is a \$25.00 charge for cable and internet service. The landlord said that he raised the rent to \$975.00 without giving the tenant a notice of rent increase or following the procedure required by the *Residential Tenancy Act*. The landlord said the tenant pays his rent in cash. The landlord does not give the tenant receipts for the rent payments because: "the tenant does not ask for them".

The landlord testified that the tenant did not pay the rent for June and the landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent on June 4, 2016. The landlord said the tenant has not paid rent for June or July. The landlord also served the tenant with a two month Notice to End Tenancy for landlord's use on June 4, 2016. The Notice to End Tenancy incorrectly said that the tenant was required to move out of the rental unit on August 4, 2016, when the earliest date that the Notice could be effective is August 31, 2016. The stated reason for the Notice was that the rental unit will be occupied by the landlord or a close family member. At the hearing the landlord said that his parents, who are currently living with the landlord in the upper unit, will move into the rental unit. He said that they are elderly and will move downstairs to provide the landlord with more room for his family, consisting of his wife and three children. The landlord's parents were not present at the hearing and did not submit any documentary evidence.

The tenant testified that in February 2015 the landlord verbally increased the rent from \$935.00 per month to \$975.00 per month without giving a written notice. The tenant said that in January of this year the landlord requested a \$200.00 per month rent increase. He said that he refused to accept the proposed increase and since then the landlord has been harassing and disturbing the tenants by making noise, withholding the tenants' mail and cutting off their internet access. The tenant said that the landlord has made false accusations about the tenant because he has complained about noise. The tenant believes that the landlord is acting in bad faith and wants to evict him in order to raise the rent. The tenant said that he and his wife are in poor health. The tenant is receiving disability benefits and due to the rental housing shortage it is difficult to find affordable housing.

The tenant testified that the landlord insists that rent must be paid in cash and he refuses to provide receipts. The tenant said that he paid June rent in full on May 30th, but the landlord would not provide a receipt and then served the tenant with the Notice to End Tenancy for unpaid rent and the two month Notice. The tenant testified that he has not paid July rent because the landlord refused to give a receipt and falsely claimed that June rent was not paid.

The tenant said there have been floods and water leaks in the rental unit due to the landlord's negligence and incompetence in making repairs and installing appliances. The tenant said that his belongings were damaged and there are ongoing issues with mould and water damage. He provided photographs of the rental unit, but did not identify any specific repairs that are required.

The tenant said that he has the rent for July and is prepared to pay the rent provided that the landlord will accept a cheque or provide receipts for cash payments.

Analysis

The landlord has not complied with the provisions of the *Residential Tenancy Act* by failing to create a written tenancy agreement as required by the *Act*, by failing to provide receipts for cash rent payments, by imposing unlawful rent increases without adhering to the requirements to give three months' Notice of Rent Increase using the proper written forms and by failing to limit the increase to the amount permitted by legislation. The landlord admitted at the hearing that he has not provided receipts for cash payments as required by section 26(2) of the *Residential Tenancy Act*. I accept the tenant's evidence that he paid June rent in full on May 30, 2016. I prefer the tenant's evidence as to payment because the landlord has never fulfilled his obligations to provide receipts to the tenant and he has the burden of establishing that there are grounds to support the Notice to End Tenancy. The landlord has no ledger or history of rent payments. The tenant forthrightly admitted that July rent has not been paid because the landlord accused him of failing to pay June rent. The tenant has offered to pay July rent if the landlord will accept a cheque or provide a receipt. I find that the landlord has failed to establish that the tenant failed to pay June rent and I accept the tenant's testimony that he paid June rent in full. I therefore allow the tenant's application and I order that the 10 day Notice to End Tenancy be, and is hereby cancelled.

The two month Notice to End Tenancy was given at the same time as the 10 day Notice to End Tenancy. The tenant submitted that it was given in bad faith because of his refusal to accept the landlord's demand for a rent increase. At the hearing the landlord acknowledged that he did ask for a rent increase from the tenant in January, but he denied that the Notice to End Tenancy had any connection to the tenant's refusal to pay increased rent. He said that his parents who live with him will occupy the rental unit.

The landlord did not submit any statement or evidence from his parents to confirm their intentions to occupy the rental unit and, given that the landlord requested a rent increase which was refused by the tenants, I find that the landlord has not provided

satisfactory evidence to establish that members of his close family intend in good faith to occupy the rental unit. The tenant testified that before giving the Notice, the landlord has engaged in other disruptive activities, including cutting off internet service and excessive noise. The tenant testified that these activities began recently and he believes they are part of a deliberate effort to force him to move.

I find that the landlord has not established that he or his family members intend in good faith to occupy the rental unit. The landlord requested an illegal rent increase that was refused and I find that the tenant's refusal to pay the increased rent forms part of the landlord's motivation to end the tenancy; as such I find that the landlord has an ulterior motive for seeking to end the tenancy and therefore has failed to show that he is acting in good faith in giving the Notice to End Tenancy. I therefore allow the tenant's application with respect to the two month Notice to End Tenancy and I order that the Notice be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

I have found that the tenant has paid the full rent for June and the landlord's application for an order of possession and a monetary award for June rent is dismissed without leave to reapply.

The tenant is not permitted to withhold July rent and the July rent must be paid forthwith. The landlord was instructed at the hearing that he must provide a receipt at the time that he receives a cash payment of rent from the tenant. The landlord was also cautioned that he must not interfere with or delay the delivery of the tenants' mail.

The tenant may apply to the Residential Tenancy Branch for a remedy if, in the future the landlord refuses to provide receipts. The tenant is also at liberty to make an application for dispute resolution if he intends to claim that he has been charged an illegal rent increase.

The tenant did not establish that particular repairs are required or that the landlord has been asked in writing to make repairs and has failed or refused to make them. The tenant's application for a repair order is dismissed with leave to reapply.

Conclusion

The landlord's application has been dismissed. The tenant's application to cancel the Notices to End Tenancy has been granted. The tenant did not pay a filing fee for his application and I do not award the recovery of any filing fees.

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 19, 2016

Residential Tenancy Branch