



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OLC, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent, for an Order requiring the Landlord to comply with the *Residential Tenancy Act* (Act) or the tenancy agreement, and to recover the fee for filing this Application.

The Agent for the Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord, although she is not certain of the date of service. The Landlord acknowledged receiving these documents, although he cannot recall when they were received.

On September 06, 2016 the Tenant submitted nine pages of evidence to the Residential Tenancy Branch. The Tenant initially stated that this evidence was sent to the Landlord by text on September 06, 2016. When she was asked how the evidence was served by text message she stated that she sent screenshots of the documents. The Landlord stated that although he has received text messages from the Tenant he does not believe he was served evidence via text message.

The Act does not permit parties to exchange evidence via text message. As there is no evidence the Landlord received evidence from the Tenant via text message, I cannot consider the evidence that was allegedly served by text.

The Agent for the Tenant subsequently stated that this evidence was submitted to the Residential Tenancy Branch on September 06, 2016 was personally served to the Landlord on September 06, 2016. The Landlord stated that he was not personally served with evidence for these proceedings.

The Agent for the Tenant was advised that:

- the Tenant's evidence package was not accepted as evidence, as the Landlord did not acknowledge receipt of it;
- during the hearing she has the right to refer to any document she submitted in evidence; and
- if, during the hearing, it appears that it is necessary for me to view any particular document the hearing will be adjourned to provide the Tenant the opportunity to re-serve that document.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. At the end of the hearing the Agent for the Tenant stated that she did not need an adjournment for the purposes of re-serving evidence.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- the Tenant moved into the rental unit on May 01, 2014;
- when the tenancy began the parties sign a tenancy agreement that named the female Tenant and a second male as the tenants;
- an addendum to the first tenancy agreement declared that the rent will increase by \$200.00 if more than two adults live in the rental unit;
- the Tenant and the Landlord subsequently entered into a second written tenancy agreement that named the female Tenant as the only tenant;
- the second tenancy agreement came into effect on May 01, 2015;
- an addendum to the second tenancy agreement declared that the rent will increase by \$200.00 (per adult) if more than two adults live in the rental unit;
- the second tenancy agreement required the Tenant to pay rent of \$1,350.00 by the first day of each month;
- the Tenant was served with a Two Month Notice to End Tenancy that required the Tenant to vacate the rental unit by August 31, 2016; and
- the rental unit was vacated on August 20, 2016.

The Agent for the Tenant stated that she moved into the rental unit in April of 2016. She stated that because she was the second person living in the suite at that time, no additional rent was due. The Landlord agreed that no additional rent was due as a result of the Agent for the Tenant moving into the unit in 2016.

The Landlord stated that he noticed a male was staying in the rental unit in July or August of 2015, but he did not know if the male was simply visiting or staying for an

extended period of time. He stated that on June 16, 2016 he asked the Tenant if the male had been living in the unit and the Tenant told him that the male had stayed with her for about 4 months.

The Landlord stated that he is not certain which four months the male was living in the unit during the summer of 2015. He contends that the Tenant owes an additional \$800.00 for the four months the male was living in the unit.

The Agent for the Tenant stated that a third person was not living in the rental unit in the summer of 2015. She stated that there was a third person living in the rental unit in January, February, and March of 2015. She stated that she is certain the male was living in the unit in 2015, not 2016.

The Agent for the Tenant read out text messages the Tenant exchanged with the Landlord in February of 2016, in which the Tenant informed the Landlord that the male who had been living with her was no longer residing in the unit. The Landlord stated that he does not recall exchanging these text messages.

The Landlord stated that on July 29, 2016 he personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent. He stated this notice was served because he believes the Tenant owed an additional \$800.00 in rent because a third adult was living in the rental unit in the summer of 2015.

The Agent for the Tenant stated that on, or about, July 29, 2016 the Tenant located the Ten Day Notice to End Tenancy in her mail box.

Analysis

On the basis of the undisputed evidence I find that:

- on May 01, 2015 the Landlord and the Tenant entered into a written tenancy agreement, which named the Tenant as the sole Tenant;
- the second tenancy agreement served to end the previous tenancy between the Landlord, the Tenant, and a third party; and
- the second tenancy agreement required the Tenant to pay an additional \$200.00 (per adult) if more than two adults live in the rental unit.

On the basis of the testimony of the Agent for the Tenant I accept that there was a third adult living in the rental unit in January, February, and March of 2015. Even if I concluded that some additional rent was due as a result of the third adult living in the rental unit during those months, I would conclude that the third adult was living in the unit during the first tenancy. I therefore could not conclude that the Landlord had the right to end the second tenancy on the basis that the Tenant owed rent from the first tenancy.

I find that the Landlord has submitted insufficient evidence to establish that more than two adults were living in the rental unit at any point during the second tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that a third adult was living in the unit during the summer of 2015 or that refutes the Agent for the Tenant's testimony that a third adult was not living in the rental unit after March of 2015.

As the Landlord has failed to establish that a third adult was living in the rental unit during the second tenancy, I find that no "additional rent" was due during the second tenancy. As the Landlord has failed to establish that rent was outstanding from the second tenancy, I find that the Landlord did not have the right to end this tenancy for unpaid rent. I therefore set aside the Ten Day Notice to End Tenancy that is the subject of this dispute.

I find that the Tenant's Application for Dispute Resolution has merit and I grant her application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim of \$100.00 as compensation for the cost of filing this Application for Dispute Resolution and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: September 21, 2016

Residential Tenancy Branch

