



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, ET, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an order of possession for unpaid rent, a monetary order for unpaid rent, an early end to the tenancy and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing. Only a copy of the Notice to end tenancy and a proof of service document were submitted. The parties were able to provide affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The parties agreed that A.B., who attended the hearing, is a party to the tenancy. The application has been amended to include A.B. as a respondent.

A.B. confirmed that each of the other respondents was served with the hearing documents on August 11, 2016.

The landlord confirmed that there is no basis for an early end of tenancy based on section 56 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

Background and Evidence

There was no dispute that the tenancy commenced in June 2016. There is no signed tenancy agreement. Initially the tenant agreed rent was \$1,200.00 per month; later in the hearing the tenant said rent was \$1,100.00. There was no dispute rent is due on the first day of each month.

When the tenants moved into the unit the landlord was away. He had mentioned the rental to his roofer, who arranged to have these individuals to move into the rental unit.

The landlord said he has not received deposits and that rent has been paid in small amounts, not when it is due. The landlord confirmed that he has accepted cash payments and not issued receipts as he is busy working and does not want to take the time to issue the receipts.

The landlord said he received one rent payment directly from a government ministry and then the payments stopped. The tenant said that all of the rent with the exception of September 2016 was paid by the government ministry directly to the landlord. However, the tenant also confirmed that \$325.00 of June 2016 rent had not been paid with June rent.

The parties agreed that on July 27, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of August 6, 2016, was served to the tenants. A.M. confirmed receipt of the Notice on July 27, 2016. A proof of service document submitted by the landlord indicated that the landlord witnessed a friend, B.B. personally give the Notice to tenant A.P., who then signed the proof of service confirming receipt of the Notice.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$325.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The landlord said that he eventually received the \$325.00 owed for June 2016 but could not recall the date it was given. The landlord said the payment was made in either August or September, 2016.

The tenant said she thought the \$325.00 was paid on August 2, 2016, but she could not be sure of the date. The tenant said that when July 2016 rent was paid at the end of July the \$325.00 owed from June should have been deducted from that payment. The tenant said the government ministry was told by the tenants not to continue with direct payments to the landlord.

It was explained to the tenant that the June rent would have remained in arrears as any payment made in July for July rent is not meant to cover past arrears.

The tenants did not dispute the Notice.

Analysis

I find that the tenants received the 10 day Notice to end tenancy for unpaid rent on July 27, 2016 when it was given to tenant A.P.

The parties confirmed that the balance of June 2016 rent in the sum of \$325.00 was paid and that the Notice ending tenancy was issued due to that unpaid rent.

The landlord could not confirm whether the balance of June 2016 rent was paid within five days of July 27, 2016. The landlord said it was paid sometime in August or September. When given the opportunity during the hearing to locate evidence to support the date of payment the landlord said he was living in disarray and had barley located the notice of hearing.

The tenant thought the balance of June 2016 rent was paid on August 2, 2016. If that is correct then the tenancy should end. The sum owed for June 2016 would not have been paid within five days of July 27, 2016. However, it is for the landlord to prove the date the balance of the rent was paid and he could not do so. I cannot end the tenancy based on a date the tenant guesses rent was paid. The landlord has the burden of proving the reason given on the Notice and came to the hearing without the details required to prove when rent had been paid.

I find on the balance of probabilities that the landlord has not proven that the balance of June 2016 rent owed was paid outside of the required five day period. Therefore, I find that the Notice ending tenancy for unpaid rent issued on July 27, 2016 is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

There was discussion during the hearing regarding the method of rent payment. The landlord said the tenants need to call him on the first day of each month and he will go to the rental unit to pick up the rent. The landlord has received some past rent by direct payment from the government and did not object to that method of payment.

I note that the landlord is required, in accordance with section 26(2) of the Act, to issue a receipt for any cash payment made by the tenants. A failure to do so may impact the landlords' ability to prove rent was not paid.

During the hearing the parties were informed that if the tenancy were to continue I would issue orders in relation to the tenancy, to provide clarity. Therefore, pursuant to section 62(3) of the Act I find and order that:

- The tenancy is bound by the prescribed schedule of standard tenancy terms, a copy of which is appended after the conclusion of this decision;
- Rent is \$1,200.00 per month and must be paid in advance or on the first day of each month; and
- The tenants must immediately provide the landlord with a key to the rental unit.

Conclusion

The 10 day Notice to end tenancy for unpaid rent issued on July 27, 2016 is cancelled.

Orders have been issued.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 04, 2016

Residential Tenancy Branch

Schedule

[am. B.C. Regs. 234/2006, s. 22; 223/2015, App. 3, s. 9.]

Application of the *Residential Tenancy Act*

- 1 (1) The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the *Residential Tenancy Act* or a regulation made under that Act, or any standard term. If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.
- (2) Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable.

(3) The requirement for agreement under subsection (2) does not apply to the following:

- (a) a rent increase given in accordance with the *Residential Tenancy Act*,
- (b) a withdrawal of, or a restriction on, a service or facility in accordance with the *Residential Tenancy Act*,
- (c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

Security deposit and pet damage deposit

2 (1) The landlord agrees

- (a) that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property,
- (b) to keep the security deposit and pet damage deposit during the tenancy and pay interest on it in accordance with the regulation, and
- (c) to repay the security deposit and pet damage deposit and interest to the tenant within 15 days of the end of the tenancy agreement, unless
 - (i) the tenant agrees in writing to allow the landlord to keep an amount as payment for unpaid rent or damage, or
 - (ii) the landlord makes an application for dispute resolution under the *Residential Tenancy Act* within 15 days of the end of the tenancy agreement to claim some or all of the security deposit or pet damage deposit.

(2) The 15 day period starts on the later of

- (a) the date the tenancy ends, or
- (b) the date the landlord receives the tenant's forwarding address in writing.

- (3) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both.
- (4) The tenant may agree to use the security deposit and interest as rent only if the landlord gives written consent.

Pets

- 3 Any term in this tenancy agreement that prohibits, or restricts the size of, a pet or that governs the tenant's obligations regarding the keeping of a pet on the residential property is subject to the [*Guide Dog and Service Dog Act*](#).

Condition inspections

- 4 (1) In accordance with sections 23 and 35 of the Act [*condition inspections*] and Part 3 of the regulation [*condition inspections*], the landlord and tenant must inspect the condition of the rental unit together
 - (a) when the tenant is entitled to possession,
 - (b) when the tenant starts keeping a pet during the tenancy, if a condition inspection was not completed at the start of the tenancy, and
 - (c) at the end of the tenancy.
- (2) The landlord and tenant may agree on a different day for the condition inspection.
- (3) The right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not perform the landlord's obligations under sections 23 and 35 of the *Residential Tenancy Act*.
- (4) A right of the tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the tenant fails to

perform the tenant's obligations under section 23 and 35 of the *Residential Tenancy Act*.

Payment of rent

- 5 (1) The tenant must pay the rent on time, unless the tenant is permitted under the Act to deduct from the rent. If the rent is unpaid, the landlord may issue a notice to end a tenancy to the tenant, which may take effect not earlier than 10 days after the date the tenant receives the notice.
- (2) The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under section 27 (2) of the Act.
- (3) The landlord must give the tenant a receipt for rent paid in cash.
- (4) The landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord. If the landlord does not have a forwarding address for the tenant and the tenant has vacated the premises without notice to the landlord, the landlord must forward any post-dated cheques for rent to the tenant when the tenant provides a forwarding address in writing.

Rent increase

- 6 (1) Once a year the landlord may increase the rent for the existing tenant. The landlord may only increase the rent 12 months after the date that the existing rent was established with the tenant or 12 months after the date of the last legal rent increase for the tenant, even if there is a new landlord or a new tenant by way of an assignment. The landlord must use the approved Notice of Rent Increase form available from any Residential Tenancy office or Government Agent.
- (2) A landlord must give a tenant 3 whole months notice, in writing, of a rent increase.

[For example, if the rent is due on the 1st of the month and the tenant is given notice any time in January, including January

1st, there must be 3 whole months before the increase begins. In this example, the months are February, March and April, so the increase would begin on May 1st.]

- (3) The landlord may increase the rent only in the amount set out by the regulation. If the tenant thinks the rent increase is more than is allowed by the regulation, the tenant may talk to the landlord or contact the Residential Tenancy office for assistance.
- (4) Either the landlord or the tenant may obtain the percentage amount prescribed for a rent increase from the Residential Tenancy office.

Assign or sublet

- 7 (1) The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length of 6 months or more, the landlord must not unreasonably withhold consent. Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.
- (2) If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may make an application for dispute resolution under the *Residential Tenancy Act*.

Repairs

- 8 (1) Landlord's obligations:
 - (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
 - (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to

make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair.

(2) Tenant's obligations:

(a) The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by that tenant. The tenant is not responsible for repairs for reasonable wear and tear to the residential property.

(b) If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the cost of repairs, serve a notice to end a tenancy, or both.

(3) Emergency repairs:

(a) The landlord must post and maintain in a conspicuous place on the residential property, or give to the tenant in writing, the name and telephone number of the designated contact person for emergency repairs.

(b) If emergency repairs are required, the tenant must make at least two attempts to telephone the designated contact person, and then give the landlord reasonable time to complete the repairs.

(c) If the emergency repairs are still required, the tenant may undertake the repairs, and claim reimbursement from the landlord, provided a statement of account and receipts are given to the

landlord. If the landlord does not reimburse the tenant as required, the tenant may deduct the cost from rent. The landlord may take over completion of the emergency repairs at any time.

(d) Emergency repairs must be urgent and necessary for the health and safety of persons or preservation or use of the residential property and are limited to repairing

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit, or
- (v) the electrical systems.

Occupants and guests

- 9** (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- (2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
- (3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

Locks

- 10** (1) The landlord must not change locks or other means of access to residential property unless the landlord provides each tenant with new keys or other means of access to the residential property.
- (2) The landlord must not change locks or other means of access to a rental unit unless the tenant agrees and is given new keys.

- (3) The tenant must not change locks or other means of access to
 - (a) common areas of residential property, unless the landlord consents to the change, or
 - (b) his or her rental unit, unless the landlord agrees in writing to, or the director has ordered, the change.

Landlord's entry into rental unit

- 11** (1) For the duration of this tenancy agreement, the rental unit is the tenant's home and the tenant is entitled to quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance, and exclusive use of the rental unit.
- (2) The landlord may enter the rental unit only if one of the following applies:
- (a) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant a written notice which states
 - (i) the purpose for entering, which must be reasonable, and
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant agrees otherwise;
 - (b) there is an emergency and the entry is necessary to protect life or property;
 - (c) the tenant gives the landlord permission to enter at the time of entry or not more than 30 days before the entry;
 - (d) the tenant has abandoned the rental unit;
 - (e) the landlord has an order of the director or of a court saying the landlord may enter the rental unit;
 - (f) the landlord is providing housekeeping or related services and the entry is for that purpose and at a reasonable time.
- (3) The landlord may inspect the rental unit monthly in accordance with subsection (2) (a).

- (4) If a landlord enters or is likely to enter the rental unit illegally, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director to change the locks, keys or other means of access to the rental unit and prohibit the landlord from obtaining entry into the rental unit. At the end of the tenancy, the tenant must give the key to the rental unit to the landlord.

Ending the tenancy

- 12** (1) The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month.

[For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]

- (2) This notice must be in writing and must
- (a) include the address of the rental unit,
 - (b) include the date the tenancy is to end,
 - (c) be signed and dated by the tenant, and
 - (d) include the specific grounds for ending the tenancy, if the tenant is ending a tenancy because the landlord has breached a material term of the tenancy.
- (3) If this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the *Residential Tenancy Act*.
- (4) The landlord may end the tenancy only for the reasons and only in the manner set out in the *Residential Tenancy Act* and the landlord must use the approved notice to end a tenancy form available from the Residential Tenancy office.
- (5) The landlord and tenant may mutually agree in writing to end this tenancy agreement at any time.

- (6) The tenant must vacate the residential property by 1 p.m. on the day the tenancy ends, unless the landlord and tenant otherwise agree.

Landlord to give tenancy agreement to tenant

- 13** The landlord must give the tenant a copy of this agreement promptly, and in any event within 21 days of entering into the agreement.

Dispute resolution

- 14** Either the tenant or the landlord has the right to make an application for dispute resolution, as provided under the *Residential Tenancy Act*.

Note: *this regulation repeals B.C. Regs. 161/2000, 264/98, 370/99, 125/2001 and 49/96.*

□ [Provisions of the [Residential Tenancy Act](#), S.B.C. 2002, c. 78, relevant to the enactment of this regulation: sections 97, 104 and 115]