



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

DRI CNC MNR MNDC OLC ERP RP PSF AS

Introduction

This hearing dealt with the tenants' application to cancel a notice to end tenancy; dispute a rent increase; orders for repairs and emergency repairs; orders that the landlord provide services or facilities required by law; and for monetary compensation for damage or loss under the Act. Two tenants, an advocate for the tenant and an agent for the landlord participated in the teleconference hearing.

Each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue(s)

Partial Settlement

At the outset of the hearing the parties agreed that the tenancy would end on October 31, 2016 and the landlord was entitled to an order of possession for that date. The landlord also agreed to immediately provide the tenants with a key to the laundry room. I therefore did not consider the portions of the tenants' application regarding cancelling a notice to end tenancy; orders for repairs and emergency repairs; or an order that the landlord provide services or facilities required by law.

Responsibility for Broken Windows

The tenants sought an order that the landlord accept the tenants' receipt for repairs to broken windows. I informed the parties that if the landlord claims compensation for broken windows, that matter will then be addressed, but I could not deal with it in the tenants' application.

Issue(s) to be Decided

Did the landlord raise the rent contrary to the Act?
If so, are the tenants entitled to recovery of any overpayment?
Are the tenants entitled to further monetary compensation as claimed?

Background and Evidence

The tenancy began on December 1, 2016, with monthly rent of \$760.00 due in advance on the first day of each month. A term in the addendum to the tenancy agreement indicates that the landlord may charge the tenant "a late fee of \$25.00 plus an administration fee of \$15.00 if the rent is not paid on time." The rent was increased to \$775.00 beginning February 1, 2015; and again increased to \$795.00 beginning April 1, 2016.

On August 24, 2016 the landlord served the male tenant with written notice that because the female tenant had moved in, the rent would increase to \$840.00 per month beginning September 1, 2016. The landlord and the tenants did not enter into a new lease agreement to include the female tenant. There is no clause in the tenancy agreement or the addendum to the agreement that the rent would increase if an additional occupant began living in the rental unit. The tenants paid \$840.00 rent for September 2016.

Tenants' Claim

The tenants submitted that because the landlord did not serve a proper notice of rent increase, their rent should remain at \$795.00 per month. The tenants also applied to recover two late fees of \$25.00 each and two administrative fees of \$15.00 each.

The tenants stated that on January 17, 2015 their key broke off in the lock and they had to call a locksmith to repair it. The tenants stated that they could not call the landlord because it was on the weekend and the only emergency number provided was the same as the office number. The tenants claimed \$79.95 for the cost of the locksmith.

The tenants stated that they have suffered stress since the landlord served them with a notice to end tenancy. The tenants stated that they have had to move their possessions into storage and they have been unable to use the laundry room since September 24, 2016, when the landlord took away their laundry room key. The tenants claimed \$240.00 in compensation for loss of quiet enjoyment.

Landlord's Response

The landlord stated that the female tenant had been living in the rental unit and they asked her to complete an application form. On August 24, 2016 the landlord notified the tenants that their rent would increase to \$840.00 as of September 1, 2016, and they would draw up a new tenancy agreement shortly. The landlord stated that they were entitled to the late fees and administrative fees, as they were set out in the addendum to the tenancy agreement.

The landlord stated that the tenant never asked them for anything in regard to the broken key. The landlord stated that when there is an emergency and the tenant calls the landlord's contact number after hours, it is forwarded to an after-hours service and the emergency is addressed. The landlord stated that the tenants were made aware of this fact.

The landlord acknowledged that he took the tenants' laundry room key from an unknown male who was staying with the tenants, as the male should not have had access to the laundry room.

The landlord stated that the tenants caused the situation that was giving them stress, and they should not receive monetary compensation for that stress.

Analysis

I find that the landlord did not properly raise the rent in accordance with the Act. The landlord did not enter into a new tenancy agreement with the tenants, and the original agreement did not allow for the landlord to increase the rent if another occupant moved in. The tenants are therefore entitled to recovery of the **\$45.00** overpayment of September 2016 rent.

Section 7 of the Regulation under the Act sets out that if the tenancy agreement provides for it, the landlord may charge the tenant an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. In this case the landlord charged the tenants fees of \$40.00 for each instance that the rent was late, by breaking it down into "late fees" and "administrative fees." I find that the amounts charged by the landlord of \$40.00 each time the rent was late are in excess of the maximum amount permitted, and the tenants are therefore entitled to recovery of the **\$80.00** paid for late rent fees.

Section 33 of the Act requires that a tenant may have emergency repairs made only when emergency repairs are needed; the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs; and following those attempts, the tenant has given the landlord reasonable time to make the repairs. I find that the tenants are not entitled to recovery of the amount paid for the broken key, as they did not follow the steps required under the Act and they thereby deprived the landlord of the opportunity to mitigate the cost of repairs.

I find that the tenants did not provide sufficient evidence to establish that they were entitled to compensation for the stress they suffered after receiving the notice to end tenancy. The landlord complied with the Act when they served the tenant with the notice. However, I do find that the tenants are entitled to compensation for lack of access to the laundry room and resulting stress, from September 24, 2016 to October 12, 2016, a period of 19 days. I grant the tenants compensation of **\$50.00** (approximately 10 percent of their rent, calculated on a per diem basis) for temporary loss of use of the laundry room and resulting inconvenience and stress.

Conclusion

As per the settlement agreement, I grant the landlord an order of possession effective October 31, 2016. The tenants must be served with the order of possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenants are entitled to compensation of \$175.00 and I grant the tenants an order for that amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The remainder of the tenants' application is dismissed.

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: October 17, 2016

Residential Tenancy Branch