



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vicini Homes (Stella) Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR, MNDC, MNSD, OLC, RR, DRI, PSF, LRE, O, FF

Introduction:

The Tenant's Application for Dispute Resolution was the subject of a dispute resolution proceeding on October 13, 2016. The Residential Tenancy Branch Arbitrator conducting that hearing dismissed the Application for Dispute Resolution because the Tenant did not attend the hearing and the Arbitrator granted the Landlord an Order of Possession.

The Tenant filed an Application for Review Consideration and on October 27, 2016 a Residential Tenancy Branch Arbitrator determined that a new hearing should be convened.

The hearing on November 28, 2016 was convened to consider the merits of the Tenant's Application for Dispute Resolution in which the Tenant applied:

- to cancel a Notice to End Tenancy for Unpaid Rent;
- to dispute a rent increase;
- for a monetary Order for money owed or compensation for damage or loss;
- for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement;
- for authority to reduce the rent;
- for the return of her security deposit;
- for an Order requiring the Landlord to provide services or facilities;
- to suspend or set conditions on the Landlord's right to enter the rental unit;
- for "other"; and
- to recover the fee for filing an Application for Dispute Resolution.

During these proceedings the Tenant withdrew her application to suspend or set conditions on the Landlord's right to enter the rental unit.

Shortly after the hearing commenced it became apparent that some of the issues in dispute at these proceedings are related to some issues in dispute in the Landlord's Application for Dispute Resolution, which is scheduled to be heard on December 22, 2016.

With the consent of both parties the hearing on November 28, 2016 was adjourned and this Application for Dispute Resolution was joined with the Landlord's Application for Dispute Resolution.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied:

- for a monetary Order for money owed or compensation for damage or loss;
- for a monetary Order for unpaid rent;
- to retain the Tenant's security deposit; and
- to recover the fee for filing an Application for Dispute Resolution.

At the hearing on November 28, 2016 the Tenant stated that her Application for Dispute Resolution was served to the Landlord, via registered mail, sometime in August of 2016. The Agent for the Landlord acknowledged receipt of the Application.

The Tenant submitted 64 pages of evidence to the Residential Tenancy Branch on September 14, 2016. At the hearing on November 28, 2016 the Tenant stated that this evidence was served to the Landlord via email, although she cannot recall the date of service. The Agent for the Landlord acknowledged receipt of this evidence. As the Landlord acknowledged receipt of the evidence, it was accepted as evidence for these proceedings.

On September 28, 2016 it appears that the Landlord submitted 13 pages of evidence to the Residential Tenancy Branch. At the hearing on December 22, 2016 the Agent for the Landlord stated that she does not recall submitting this evidence and she believes it may have simply been a duplicate of evidence previously submitted to the Residential Tenancy Branch. This evidence appears to be a duplication and it is being disregarded.

The Tenant submitted 17 pages of evidence to the Residential Tenancy Branch on November 07, 2016. At the hearing on November 28, 2016 the Tenant stated that this evidence was not served to the Landlord for proceedings that relate to this rental unit. At the hearing on December 22, 2016 the Tenant stated that this evidence was served to the Landlord for these proceedings, via email, on November 28, 2016. At the hearing on December 22, 2016 the Agent for the Landlord stated that this evidence was served to the Landlord for a matter relating to a different rental unit.

I favor the Agent for the Landlord's testimony that the November 07, 2016 evidence package was served to the Landlord for a different matter over the Tenant's evidence that it was served for this matter. In reaching this conclusion I was heavily influenced by the fact the Tenant testified, on November 28, 2016, that it was not served for matters relating to this rental unit, which is inconsistent with her subsequent testimony. As the evidence was not served to the Landlord for these proceedings, it was not accepted as evidence for these proceedings.

At the hearing on December 22, 2016 the Agent for the Landlord stated that the Landlord's Application for Dispute Resolution and 51 pages of evidence submitted to the Residential Tenancy Branch on October 11, 2016 were served to the Tenant, via registered mail, on June 27, 2016 and by email on June 29, 2016. The Tenant acknowledged receiving these documents by email and they were accepted as evidence for these proceedings.

On December 12, 2016 the Tenant submitted two pages of evidence to the Residential Tenancy Branch. At the hearing on December 22, 2016 The Tenant stated that this was emailed to the Landlord on December 12, 2016. The Agent for the Landlord stated that this evidence was

received, although the Landlord understood it was for a different matter that was heard the previous week. The Agent for the Landlord stated that she is in possession of the evidence.

After being advised that I would consider an adjournment for the purposes of allowing the Tenant to re-serve the evidence that was submitted on December 12, 2016, the Agent for the Landlord agreed that this evidence could be considered at these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the parties have identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

I have considered the issues that relate to the continued possession of the rental unit, which I believe are the most urgent. I have not considered the Tenant's application to provide services or facilities as I do not find that to be sufficiently related to the primary issues in dispute at these proceedings.

I therefore dismiss the application to provide services or facilities, with leave to re-apply.

Issue(s) to be Decided:

Has there been an unlawful rent increase?

Is the Tenant entitled to a rent reduction?

Is the Tenant entitled to a monetary Order?

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

Should the security deposit be retained by the Landlord or returned to the Tenant?

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

Background and Evidence:

The Tenant and the Landlord agree that:

- the tenancy began prior to the Landlord purchasing the rental unit on May 19, 2016;
- the Tenant paid a security deposit of \$875.00;
- the Tenant is subletting the rental unit to a third party;
- the rental unit is still occupied;
- the tenancy agreement the Tenant signed which declares that rent of \$1,750.00 is due by the first day of each month; and
- the Tenant has paid monthly rent of \$1,300.00 for the period between June 01, 2016 and December 31, 2016.

The Landlord contends that the rent for the rental unit is \$1,750.00. In support of this position the Agent for the Landlord submitted a copy of a tenancy agreement, which was signed by the Tenant on November 09, 2015, which declares that rent is \$1,750.00.

In support of the position that the rent for the rental unit is \$1,750.00 the Landlord submitted a "General Assignment of Leases" which is signed by the former owner's legal counsel and is dated May 19, 2016. In this document legal counsel for the Landlord declares that the lease for this rental unit and a second property "contain the entire agreements" between the former owner and the tenant of this and a second property. In this document legal counsel for the Landlord declares that the lease(s) do not contain any provision whereby a tenant may be entitled to occupy the unit or rent-reduced basis with respect to any period after the date of this assignment".

The Tenant contends that the rent for the rental unit was reduced by the former owner to \$1,300.00, effective February 01, 2016. In support of this position the Tenant submitted a copy of a letter from the former owner, dated June 01, 2016, which declares, in part, that rent for this unit was \$1,300.00, effective February of 2016. This letter declares that the rent was reduced to compensate the Tenant for "extra" repairs at the rental unit and to compensate the Tenant for trouble finding a "short term tenant as per house sold".

In support of her position that rent was reduced to \$1,300.00 the Tenant submitted a second copy of a letter from the former owner, dated December 07, 2016, which simply reiterates the information provided in the letter of June 01, 2016.

The Tenant stated that the Landlord reduced the rent in compensation for the difficulty she would have finding a sub-tenant, given that the rental unit was being sold, and in compensation for repairs completed at the unit in 2015 and 2016.

The Landlord is seeking compensation for unpaid rent, in the amount of \$3,150.00, for the period between June 01, 2016 and December 31, 2016.

The Agent for the Landlord stated that on August 12, 2016 a Ten Day Notice to End Tenancy was couriered to the rental unit, was couriered to an address provided by the Tenant, and was emailed to the Tenant. The Tenant stated that she received a signed copy of the Ten Day Notice to End Tenancy from the sub-tenant residing at the rental unit on August 12, 2016, August 13, 2016, or August 14, 2016. She stated that she also received a copy of this Notice by email. The Notice to End Tenancy declares that the Tenant must vacate the rental unit by August 26, 2016.

The Tenant is seeking compensation for the stress she has experienced as a result of the Landlord attempting to collect rent of \$1,750.00 since the tenancy began.

Analysis:

On the basis of the tenancy agreement submitted in evidence, I find that when this tenancy began the Tenant agreed to pay monthly rent of \$1,750.00.

On the basis of the "General Assignment of Leases" submitted in evidence, I find that when this tenancy was assigned to the Landlord, the former owner declared that the tenancy agreement is

the “entire agreement” and that there was no agreement that the Tenant did not have the right to reduce the rent after the date of assignment, which was May 19, 2016. I find that the information contained in this document is clear and I am satisfied, on the base of this document, that the former owner has declared that as of May 19, 2016, the rent for the unit was \$1,750.00.

On the basis of the letter from the former owner, dated June 01, 2016, I find that the former owner agreed to reduce the rent to \$1,300.00 for February of 2016. I find that this letter does not clearly specify the duration of the rent reduction. I find it possible that the rent reduction was only intended to last until the house was sold, given that reduction was granted, in part, for the difficulty of finding a “short term tenant as per house sold”.

As the “General Assignment of Leases” is clearer, I find it to be the most compelling document. I therefore find that the rent, as of May 19, 2016, remained at \$1,750.00 despite any rent reduction that had been permitted prior to that date. As the rent was \$1,750.00 at the start of the tenancy, I find that there has not been an unlawful rent increase and that the Tenant is not entitled to a rent reduction after May 19, 2016.

On the basis of the undisputed evidence, I find that the Tenant paid \$9,100.00 in rent for the period between June 01, 2016 and December 31, 2016. As monthly rent was \$1,750.00, I find that she should have paid \$15,750.00 for this period. I therefore find that the Tenant owes \$3,150.00 in rent.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due, by providing proper written notice. On the basis of the undisputed evidence I find that by August 14, 2016 the Tenant had received the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, which is the subject of these proceedings.

As the Tenant did not pay all of the rent that was due and she was served with a Ten Day Notice to End Tenancy, I find that the Landlord has grounds to end the tenancy pursuant to section 46 of the *Act*. I therefore dismiss the Tenant’s application to set aside this Ten Day Notice to End Tenancy.

As I have set aside the Tenant’s application to set aside a Ten Day Notice to End Tenancy, I find that the Landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

As I have found that the Landlord is entitled to collect rent of \$1,750.00, I find that the Tenant is not entitled to compensation arising from the Landlord’s efforts to collect that rent.

I find that the Landlord’s Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee paid to file this Application. I find that the Tenant has failed to establish the merit of her Application for Dispute Resolution and I dismiss her application to recover the fee paid to file this Application.

Conclusion:

As I have concluded that the Landlord is entitled to an Order of Possession, I find that the Order of Possession, dated October 13, 2016, which was granted to the Landlord after the hearing on October 13, 2016, remains in full force and effect. That Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim of \$3,250.00, which includes \$3,150.00 in rent and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of \$875.00 in partial satisfaction of this award.

On the basis of this calculation, I grant the Landlord a monetary Order for \$2,375.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, 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: December 23, 2016

Residential Tenancy Branch