



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

DRI, CNR, OPR, MNR

Introduction

This was a cross-application hearing.

On October 12, 2016 the tenants applied to cancel a 10 day Notice to end tenancy for unpaid rent issued on October 2, 2016, to dispute an additional rent increase and to recover the filing fee cost from the landlord.

On October 21, 2016 the landlord applied requesting an order of possession and a monetary order for unpaid rent.

The landlord provided affirmed testimony that on October 24, 2016 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were handed to tenant K.T. Documents for tenant A.W. were given to K.T. Service occurred at the rental unit at 2:00 p.m. There was no evidence that tenant K.T. served tenant A.W. with the documents.

Therefore, I find that tenant K.T. was served with the hearing documents effective October 24, 2016, the date it was personally served to the tenant. As there was no evidence that A.W. was served I find that A.W. was not served. The application is amended to remove A.W. as a respondent.

Preliminary Matters

On November 15, 2016 the landlord submitted an amendment to the application, increasing compensation for unpaid rent from \$600.00 to \$1,700.00. The amended application and evidence was given to tenant K.T. on November 15, 2016. Tenant A.W. was not served the amended application.

I find that tenant K.T. was served with the amended application on the date of personal delivery, November 15, 2016.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent or should the 10 day Notice ending tenancy for unpaid rent be cancelled?

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

Has the landlord issued a rent increase that does not comply with the Act?

Background and Evidence

The landlord supplied a copy of a written agreement issued on May 1, 2016 setting out, among other items, rent to be paid and repairs to be completed by the tenants. That document includes:

“Tenant and landlord agree to a lease term of 3 months with option to renew to up to 2 years. Monthly rent of \$700.00. No damage security deposit. On August 1, 2016 tenants and landlord will discuss possible adjustment to rent amount. Any increase must be agreed upon by both tenants and landlord...Monthly rent set at \$700.00/month as tenants are doing work in the home.”

(Reproduced as written)

The May 1, 2016 document is not signed by either party.

On July 28, 2016 the parties signed a standard Residential Tenancy Branch (RTB) tenancy agreement form. The agreement included a three page addendum. Copies of the tenancy agreement and addendums were submitted.

The tenancy agreement included a start date of May 1, 2016, for a two year fixed term. The payment of rent section on page two is not completed and refers to an addendum. The attached addendum signed by the landlord and tenants included a notation:

“raise rent \$100/month begin August 1, 2016.”

(Reproduced as written)

The addendum increased rent by \$100.00 for each month following August 2016; with a final increase to \$1,250.00 effective January 1, 2017.

The landlord stated that the tenants paid rent as follows:

- \$700.00 – May 2016
- \$700.00 – June 2016;
- \$700.00 July 2016;

- \$800.00 August 2016;
- \$900.00 September 2016;
- \$400.00 October 2016; and
- No payment in November, 2016.

The landlord said that on October 2, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of October 12, 2016, was served by posting to the tenants' door.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$600.00 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.

When the tenants paid \$400.00 rent on October 2, 2016 and the landlord issued a receipt for use and occupancy only. A copy of the receipt was provided as evidence.

The landlord said the tenants remain in the rental unit.

After 43 minutes the hearing ended. The tenant did not attend to oppose the landlords' claim or to support their application. The tenants' application was then dismissed.

Analysis

The landlord presented the tenancy as one that had commenced May 1, 2016. The initial documents created on May 1, 2016 indicated that the parties could renew the initial three month lease term. Based on the landlords' submissions and the tenancy agreement signed on July 28, 2016 I find that the parties treated the tenancy as a single term that commenced on May 1, 2016. The May 1, 2016 document was not signed and I find, on the balance of probabilities, that the tenancy agreement signed on July 28, 2016 formalized the agreement that had commenced on May 1, 2016

The agreement signed on July 28, 2016 included rent terms allowing rent to be increased effective August 2016. It was explained to the landlord that the method of handling the terms of the tenancy was unconventional, in that the tenancy agreement signed on July 28, 2016 had been backdated. However, the tenants did not attend the hearing to oppose the landlords' submission that the amount of rent payable contained in the addendum was agreed to as part of the tenancy that commenced on May 1, 2016, and as such were not additional rent increases.

Therefore, in the absence of the tenant, who was served with Notice of this hearing, I find that the tenancy commenced on May 1, 2016 and that rent was \$700.00 per month due on the first day of the month. I find that the tenancy agreement signed on July 28, 2016 contained a rent term agreed to by the parties; that rent paid had commenced at \$700.00

and would increase to \$800.00 effective August 2016, with further monthly \$100.00 increases to January 2017 when rent would be \$1,250.00.

Therefore, based on the rent term agreed to by the parties I find that the landlord is entitled to compensation in the sum of \$1,700.00 for unpaid rent to October 15, 2016 and per diem rent to December 1, 2016 (\$600.00 October and \$1,100.00 November, 2016.)

As the landlords' application has merit I find that the landlord is entitled to recover the \$100.00 filing fee cost from the tenant. The landlord has paid the fee.

Based on these determinations I grant the landlord a monetary order in the sum of \$1,800.00. In the event that the tenant does not 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.

I find that the tenant received the 10 day Notice effective October 5, 2016; three days after it was posted to the door.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was October 15, 2016.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on October 15, 2016, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenants disputed the Notice but failed to attend the hearing in support of the application. Therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice; October 15, 2016.

The tenants' application is dismissed.

The landlord has been granted an order of possession that is effective two days after service to the tenant. This order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an order of that Court.

I note that section 55(1) of the Act provides that when a tenant disputes a Notice ending tenancy and that application is dismissed the landlord must be issued an order of possession.

Conclusion

The landlord is entitled to an order of possession and monetary order based on unpaid rent.

The landlord is entitled to filing fee costs.

The tenants' application is dismissed.

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: December 02, 2016

Residential Tenancy Branch