



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNL, MNDC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order regarding a disputed additional rent increase, pursuant to section 43;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated November 28, 2016 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants, male and female, and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 102 minutes in order to allow both parties to fully present their submissions and to negotiate a settlement of a portion of the application. The hearing was also lengthened by the fact that both parties continued to interrupt each other, ask me repeated questions regarding the same issues, and change the terms of their settlement agreement.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's written evidence package. Both parties confirmed that they were ready to proceed with this hearing on the basis of me considering both parties' evidence, which they had received, reviewed and had no objections to me considering.

During the hearing, both parties confirmed that the tenants did not receive a new legal notice of rent increase, nor did the landlord impose an additional rent increase under the

Act or Residential Tenancy Regulation ("Regulation"). Accordingly, this portion of the tenants' application is dismissed without leave to reapply.

Preliminary Issue – Amendment to Tenants' Application

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to add a claim under section 67 of the *Act* for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement. The tenants did not check off the box indicating that they were seeking a monetary order in their application, although they outlined it throughout their written evidence. The landlord objected to the tenants' amendment request.

I find that the landlord had proper notice of the tenants' monetary claim and had a chance to respond to the claim before the hearing. The landlord acknowledged receiving the tenants' monetary order worksheet outlining their claim for \$13,142.38, as well as two binders of evidence explaining their monetary claim against the landlord. The landlord did not identify any prejudice as a result of the tenants not checking off the correct box in their application for a monetary claim. The landlord said that because the Arbitrator at the "previous hearing" on November 3, 2016, did not have time to deal with the tenants' monetary claim, that I should make the same findings and dismiss their monetary claim to be dealt with later. The file number for the previous hearing appears on the front page of this decision.

I notified the landlord that it was up to an Arbitrator to determine whether to sever claims at a hearing, pursuant to Rule 2.3 of the Residential Tenancy *Rules of Procedure*, which is what occurred at the previous hearing. As I spent approximately 102 minutes in this hearing, I dealt with the tenants' monetary claim to avoid a further adjournment and delay of their matter.

Preliminary Issue – Recording of Hearing by Landlord

At the outset of the hearing, the landlord stated that he was recording the conference and submitting a copy to the press. I advised the landlord to end his recording because he was not permitted to record the hearing as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") which states the following:

Persons are prohibited from recording dispute resolution hearings, except as allowed by Rule 6.12 [Official Transcript]. Prohibited recording includes any audio, photographic, video or digital recording.

The landlord claimed that he was not aware of the above rule prior to this hearing but that he reviewed the rule during the hearing. I had the landlord exit the conference and call back. When he returned to the conference, the landlord affirmed, under oath, that he was no longer recording the proceeding. I advised the landlord that any attempt to submit a recording of the conference is contrary to the *Rules* and will not be considered by the RTB if submitted.

Issues to be Decided

Are the tenants entitled to an order regarding a disputed additional rent increase?

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for landlord's use of property?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

The tenants testified that this tenancy began with the former landlord on August 1, 2012 for a fixed term of one year, after which it became a month-to-month tenancy. The landlord testified that he purchased the rental unit in August 2016 and assumed the tenancy from the former landlord. Both parties agreed that this is a month-to-month tenancy with rent in the current amount of \$1,590.00 payable on the first day of each month. The tenants confirmed that they paid a security deposit of \$825.00 to the former landlord and the landlord confirmed that he received this deposit from the former landlord. The tenants stated that they signed a written tenancy agreement with the former landlord. Both parties agreed that the tenants did not sign a new written tenancy agreement with the landlord. The tenants continue to reside in the rental unit. The tenants seek a monetary order of \$13,142.38 against the landlord as well as recovery of the \$100.00 application filing fee.

The tenants seek \$372.38 for purchasing a camera security system. They provided a receipt for the purchase. They explained that they had to buy a surveillance camera for

their own safety and security because the landlord was stalking them. They said that they did not file any charges with the police against the landlord but they called the police for advice. The tenants stated that the police advised them that they could not come by the house in order to watch the landlord, so they suggested that the tenants buy a security system. The tenants pointed to the emails between the parties, provided in their written evidence, where the landlord discussed his rights, service of documents and moving in to the rental unit, as an indication that the landlord would enter their rental unit without permission.

The landlord disputes the tenants' claim, stating that it was the tenants' choice to buy the security system and there was no need for one. The landlord said that he did not stalk the tenants, that he only approached them in person to serve documents that he was legally entitled to file and serve, that he did not harass the tenants, and that he gave written notice or obtained the tenants' consent before entering the rental unit.

The tenants seek \$4,770.00, equivalent to three months' rent, in moving expenses. They said that they are being forced to move by the landlord issuing the 2 Month Notice, the landlord has been dishonest with them, he indicated that he intends to move in and then sell the unit, and he has constantly changed his mind. The landlord disputes the tenants' claim, stating that he is legally entitled to issue a 2 Month Notice to the tenants, he is not responsible for their moving expenses, and that it is always the tenants' responsibility to pay their own costs when moving in or out of a rental unit.

The tenants seek "civil damages" of \$8,000.00 for personal and emotional distress. They said that they had no issues with the former landlord for 4.5 years during their tenancy and their former landlord provided a letter to this effect. They said that they have owned homes, know the real estate market, and have never had to deal with such "egregious behaviour" from a landlord. They said that they have had numerous issues and bad treatment from the landlord for months, and this has caused conflict between the two tenants as well as nervous, anxiety issues for the male tenant. The landlord disputes the tenants' claim, stating that he was within his legal rights to issue documents and serve them to the tenants. He claimed that he accepts responsibility for not knowing the procedural rules of the RTB but that he later learned from the RTB the proper way to serve documents and then followed the correct procedure.

Analysis

Settlement of Some Issues

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings,

the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of a portion of their dispute:

1. Both parties agreed that this tenancy will end by 5:00 p.m. on April 30, 2017, by which time the tenants and any other occupants will have vacated the rental unit;
2. Both parties agreed that the tenants are not required to pay rent to the landlord for April 2017, pursuant to section 51 of the *Act* and the landlord's 2 Month Notice, dated November 28, 2016;
3. Both parties agreed to deal with the issue of whether the tenants overpaid \$50.00 in rent for the month of November 2016 to the landlord, between themselves after the hearing.

These particulars comprise the full and final settlement of a portion of this dispute for both parties. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final and binding and enforceable, which settles a portion of this dispute.

As the parties were unable to settle the tenants' application to recover a monetary order of \$13,142.38 and the \$100.00 application filing fee, I advised them that I would be making a decision regarding these claims, based on their testimony and the parties' written evidence.

Decision regarding Tenants' Monetary Claim

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenants' claim of \$372.38 for purchasing the camera security system. I find that the tenants failed to prove parts 1 and 2 of the above test. I find that the tenants voluntarily chose to make this purchase. I find that the tenants failed to provide documentary evidence that they contacted the police and obtained advice to purchase the system. The tenants did not file any charges with the police against the landlord, as stalking is a criminal matter. I find that the landlord exercising his legal rights, issuing RTB documents and attempting to serve the tenants in person, are not valid reasons for why the landlord should compensate the tenants for purchasing a security system of their own accord.

I dismiss the tenants' claim of \$4,770.00 for moving expenses. I find that the tenants failed parts 1, 2 and 3 of the above test. The tenants are claiming for a future expense that they have not yet incurred. The tenants did not provide a breakdown of the above amount, except to state that it was for three months' rent. The tenants agreed to move from the unit and would have incurred these costs in any event when moving. I find that the landlord is not responsible for this cost.

I dismiss the tenants' claim of \$8,000.00 for civil damages for personal and emotional distress. I find that the tenants failed parts 1, 2 and 3 of the above test. The tenants did not provide a breakdown of the above amount. I find that the tenants did not provide sufficient evidence to support the above claim, such as medical records to show that they suffered from stress and anxiety or work records to show that they missed time from work or were unable to work. I find that the landlord is not responsible for this cost.

As mentioned to both parties during the hearing, the filing fee is a discretionary award usually given to a successful party after a full hearing on the merits of the claim. As the tenants were unsuccessful in their monetary application as per my decision above, and they settled the remainder of their issues with the landlord, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant(s) and any other occupants fail to vacate the rental premises by 5:00 p.m. on April 30, 2017. The tenant(s) must be served with this Order in the event that the tenant(s) and any other occupants fail to vacate the rental premises by 5:00 p.m. on April 30, 2017. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenants' application for a monetary order for \$13,142.38, an order regarding a disputed additional rent increase and to recover the \$100.00 application filing fee, is dismissed without leave to reapply.

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: January 18, 2017

Residential Tenancy Branch