



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, MNDC, OLC, LRE, LAT

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- an Order of Possession pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit and authorization to change the locks to the rental unit pursuant to section 70.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 10 Day Notice, the tenant's application for dispute resolution, the landlord's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 10 Day Notice, the respective applications and their respective evidence.

Preliminary Issue – More Time to File a Response

The tenant indicated they are seeking more time to file their application for dispute resolution in response to the landlord's 10 Day Notice. The parties confirmed that the 10 Day Notice was

served on the tenant by posting on the rental unit door on February 2, 2017. I find that pursuant to section 88 of the *Act*, the 10 Day Notice was served on February 5, 2017, three days after posting. The tenant filed her application for dispute resolution on February 9, 2017, within five days of service of the 10 Day Notice. I find that the tenant was within the time limit for filing her application for dispute resolution and an order allowing more time is unnecessary.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are either party entitled to a monetary award as claimed?

Should the tenant be authorized to change the locks of the rental unit?

Should the landlord be ordered to comply with the *Act* and have restrictions on his right to enter the rental unit?

Background and Evidence

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

The rental unit is the main floor of a detached residence. The tenant and her family occupy the main floor while the landlord resides in the basement unit. The parties had differing recollection about aspects of this tenancy. The landlord testified that the month-to-month tenancy began in July, 2016 with monthly rent set at \$2,200.00. The tenant testified that the tenancy began August 1, 2016 and the rent was \$2,000.00 until the parties agreed to increase the rent to \$2,200.00 from September 1, 2016 onwards. The parties agreed that there was no security deposit or pet damage deposit paid at the start of the tenancy.

The landlord testified that the tenant has never paid the full amount of rent in a timely manner during the tenancy. The landlord submitted a Direct Request worksheet showing the rent owing and paid during the tenancy. The landlord testified that the total amount of rent arrear for this tenancy is \$10,700.00 as of March 16, 2017 the date of the hearing.

The tenant disputed the landlord's evidence of the amounts and dates of payment. The tenant provided testimony regarding the rent payments she made. The tenant testified that \$10,220.00 has been paid to the landlord during the tenancy. The tenant confirmed that there is a rent arrear as full monthly rent was rarely paid during the tenancy. By the tenant's calculations the rent arrear is \$4,980.00. However, the tenant testified that the tenancy agreement allows the tenant to perform work for the landlord in lieu of making rent payment in cash. The tenant said that when the tenancy started the rental property was in disarray and required considerable work to clean it up. The tenant said that the rental property required painting, removal of mold, debris and garbage, lawn care and other work. The tenant said that the work performed under the tenancy agreement should be valued as the equivalent of the arrears. The tenant claimed

that no rent is owed, as the rent was paid through their work hours. The tenant testified that the value of the work performed for the landlord exceeds the value of the rent and the tenant is owed \$11,615.55 from the landlord.

The tenant's witness provided evidence that he has performed various work around the rental property. He testified that he was not party to the agreement between the landlord and tenant but understood from the tenant that work was accepted in lieu of monetary rent payments.

The landlord testified that he had no recollection of entering into an arrangement with the tenant to allow work for rent. He testified that payments are received in cash and he occasionally provides a receipt to the tenant should they request. The landlord is aware that the tenant has performed work around the rental property but said that he believed the tenant chose to do the work independently. He testified that he never agreed to the work by the tenant and should not be obligated to forgive unpaid rent or make payment for the work.

The landlord testified that he has entered the rental unit without authorization on one occasion when he heard commotion from inside the unit. He said that he knocked before entering and used his key when there was no answer. He said that he entered the rental unit to find that the tenant's pets, a cat and dog, were fighting. He said that he has not entered the rental unit on any other occasion.

Analysis – Order of Possession

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case the parties agree that the full amount of rent has not been paid in cash. The parties disagree on the monetary amount that is outstanding for this tenancy. The landlord said that the arrear is \$10,700.00. The tenant said that the cash arrear is \$4,980.00 but the value of the labour provided means the landlord owes the tenant \$11,615.55.

I accept the evidence of the parties that there rent has not been paid in full in cash. I next turn to the issue of whether there was an agreement between the landlord and tenant that the tenant would provide labour in lieu of making cash payments.

Given the minimal written evidence regarding this tenancy agreement and conflicting testimony regarding the tenancy I must first make a determination as to the credibility of the evidence provided by the parties. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

I find the landlord's evidence to be more credible. While I found the tenant's evidence was clear there were some portions which were inconsistent and I find it unlikely that work would be performed for this tenancy without more accurate records being kept. The tenant initially testified that the agreement to perform work in lieu of making rent payment was an oral agreement made in the presence of witnesses. The tenant later said that the arrangement was a part of the written tenancy agreement. The tenant submitted into written evidence statements provided by three witnesses attesting to work done on the rental property. These three signed statements are identical but for the witnesses' signatures. I find these carbon copied witness statements to not be particularly persuasive. I find it more likely that if there was an agreement between the parties the work would be better documented, including the number of hours agreed to, the materials that would be supplied by each party, and the value of the work to be undertaken. The invoices and estimates submitted into written evidence by the tenant provide only vague descriptions of the work. There is no evidence that the estimates were approved by the landlord. I also note that the invoices and estimates inconsistently apply sales tax for the work and supplies.

I accept the landlord's evidence that there was no agreement that the tenants perform work in lieu of rent payment. Consequently, based on the testimony of the parties I find that the tenant has not paid the full amount of rent owing for this tenancy.

I accept the parties' evidence that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act*. Therefore, I dismiss the tenant's application to cancel the 10 Day Notice and I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

Analysis – Monetary Order

The landlord testified that \$10,730.00 is the total arrear for this tenancy. The tenant testified that by her calculation the rent arrear is \$4,980.00. The landlord submitted a Direct Request Worksheet in support of his monetary claim. However, the worksheet does not correspond with the receipts for rent payments signed by the landlord that have been submitted into written evidence by the tenant. The landlord did not provide copies of receipts, an original ledger for the tenancy or bank statements showing the rent received. The landlord was unable to explain how he arrived at the figures entered into the worksheet.

I find that the landlord has not shown on a balance that the amount claimed is the amount of arrear for this tenancy. While I find that based on the evidence of the parties there is some amount of rent owing for this tenancy the landlord has failed to provide sufficient evidence to justify his monetary claim. Consequently, I dismiss the landlord's application for a monetary order.

Analysis – Rental Unit Access

As I have issued an Order of Possession to the landlord I find it unnecessary to make a finding regarding the tenant's application on this matter.

Conclusion

The tenant's application is dismissed.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The portion of the landlord's application seeking a monetary award for unpaid rent is dismissed with 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: March 21, 2017

Residential Tenancy Branch