



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, DRI, CNL, CNR, MNR, MNDC, ERP, OP

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on March 29, 2017 for:

1. An Order cancelling two notices to end tenancy - Sections 46 and 49;
2. An Order allowing more time to make an application to cancel a notice to end tenancy - Section 66;
3. An Order in relation to a dispute of a rent increase - Section 43;
4. A Monetary Order for compensation - Section 67;
5. A Monetary Order for the cost of emergency repairs - Section 67; and
6. An Order for the Landlord to make emergency repairs - Section 32.

The Landlord applied on March 29, 2017 with an amendment made April 10, 2017 for:

1. An Order of Possession - Section 55; and
2. An Order for unpaid rent or utilities - Section 67.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenant states that she has found another rental and expects to move into that unit by May 8, 2017. The Tenant states that there are no emergency repairs and that the Tenant seeks to claim compensation for losses incurred during the tenancy.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that all claims made in an application must be related. As the claims for compensation are not related to the primary matter of whether the tenancy ends, I dismiss this claim with leave to reapply. As there are no emergency repairs required and as the tenancy is ending I dismiss the claims for any repairs.

Issue(s) to be Decided

Is the Tenant entitled to more time to make an application to dispute a notice to end tenancy?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Background and Evidence

The following are agreed facts: The tenancy started on September 1, 2015 for a fixed term to end September 31, 2016. Rent for this tenancy was at \$850.00 per month payable on the first day of each month. At the outset of this tenancy the Landlord collected \$425.00 as a security deposit. There was no requirement for the Tenant to move out of the unit at the end of the fixed term. The Parties entered into a new tenancy agreement on November 1, 2016 with monthly rent at \$875.00. This rent increase was consistent with the allowable yearly increase. The security deposit paid on the first tenancy was transferred to tenancy that started in November 2016. The Tenant failed to pay rent for March, April and May 2017.

The Landlord claims unpaid rent.

On February 7, 2017 the Landlord served the Tenant in person with a two month notice to end tenancy for landlord's use. The reason for the Notice was that the Landlord's mother would be moving into the unit. The effective move out date for this Notice was April 30, 2017. The Tenant confirms that she is disputing this Notice. The Tenant states that she was unable to make an application to dispute the Notice within the required time limit as the Tenant is on medication and has some challenges with

organization. The Landlord claims an order of possession for as soon as possible. The Landlord has not yet paid the Tenant the equivalent of one month's rent for having ended the tenancy for landlord's use.

The Landlord states that the Tenant arbitrarily deducted \$42.95 from February 2017 rent for the purchase of a snow shovel. The Landlord states that the Tenant did not give him the snow shovel, that the Landlord has plenty of snow shovels and that the Landlord is responsible for clearing the unit of snow. The Landlord claims this amount back from the Tenant. The Tenant states that she did not make any deduction to February 2017 rent. The Tenant also states that the Landlord was given the shovel and agreed to reimburse the Tenant. The Tenant states that since the Landlord did not shovel the snow in December 2016 the Tenant took it upon herself to buy a shovel and remove the snow. The Tenant states that this was not a problem until now.

There is nothing in the tenancy agreement requiring the Tenant to pay for internet costs. The Landlord states that there is an oral agreement that for the Tenant to pay costs for the internet that has been in place since prior to the second written tenancy agreement.

Analysis

Section 49(8) provides that a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice. Section 66 of the Act provides that a time limit may only be extended in exceptional circumstances. Section 49 of the Act provides that where a tenant does not dispute a notice to end tenancy for cause within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Given the lack of any supporting evidence that the Tenant's medication stopped the Tenant from either making the application or obtaining assistance to make the application to dispute the Notice and given that the Tenant made its application nearly two months after receiving the Notice I find that the Tenant has failed to make its application within the time required and has failed to provide sufficient evidence of exceptional circumstances that stopped the Tenant from

making the application in time. As the Notice cannot be considered to have been disputed I find that the Tenant must now vacate the rental unit. I grant the Landlord an order of possession.

Section 5 of the Act provides that landlords and tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect. As the rental increase provided for in the second tenancy agreement is not above the allowable yearly increase, I find that the Parties have not avoided the increase provisions of the Act by entering into a second tenancy agreement and that the rental amount for the second tenancy agreement is valid. I dismiss the Tenant's claim in relation to a rent increase.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 51 of the Act provides that a tenant who receives a notice to end a tenancy for landlord's use is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Tenant's evidence in relation to the shovel was contradictory I prefer the Landlord's evidence and find that the Tenant failed to pay **\$42.95** for February 2017 rent and that the Landlord is therefore entitled to that amount. Based on the undisputed evidence of unpaid rent by the Tenant and unpaid compensation by the Landlord, I find that the Tenant owes the Landlord **\$875.00** for March 2017 rent and **\$875.00** for April 2017 rent. As the Landlord has been provided with an order of possession that will shortly be effective I also find that the Tenant owes rent for the period May 1 to 7, 2017 inclusive in the amount of **\$197.61** ($\$875.00/31 = 28.23 \times 7$) for a total rental entitlement of **\$1,990.56**.

Based on the undisputed evidence that the Landlord has yet to pay the Tenant the equivalent of one month's rent I deduct this equivalent amount of \$875.00 from the rental entitlement leaving **\$1,115.56** owing by the Tenant for unpaid rents. As the

tenancy is ending I further deduct the security deposit of **\$425.00** plus zero interest from \$1,072.61 leaving **\$690.56** owed to the Landlord.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. As there is nothing in the tenancy agreement that requires the Tenant to pay for internet I dismiss the claim for internet costs.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant 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.

I order that the Landlord retain the **deposit** and interest of \$425.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$690.56**. If necessary, this order may be filed in the 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: May 03, 2017

Residential Tenancy Branch