



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, DRI, MNDC, OLC, LRE, FF, 0

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- more time than prescribed to dispute a notice to end the tenancy;
- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- disputing a rent increase;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement;
- an order suspending or setting conditions on the landlord's right to enter the rental unit; and
- to recover the filing fee from the landlord for the cost of the application.

An agent for the tenant and the landlord attended the hearing and the landlord was represented by legal counsel. The parties each gave affirmed testimony and were given the opportunity to question each other and make submissions.

During the course of the hearing, counsel for the landlord indicated that a Title Search of the rental property was provided by the landlord as evidence to the tenants and to the Residential Tenancy Branch on May 12, 2017 by regular mail, however I have not received it. No other evidence was provided by the landlord, and since the parties agree as to the information contained in that Title Search, it is not required for this hearing.

No further issues with respect to service or delivery of documents or evidence were raised, and all evidence of the tenants has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should the tenant be granted more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that rent has been increased contrary to the *Residential Tenancy Act*?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for an over-payment of rent?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to entering the rental property?
- Has the tenant established that conditions on the right of the landlord to enter the rental unit should be imposed or suspended?

Background and Evidence

The landlord testified that the tenant's agent and the landlord resided together in a common-law relationship. The son of the tenant's agent moved into the basement suite of the home on January 1, 2015. No written tenancy agreement exists, however there was a verbal agreement for a 1 year fixed term, and is now on a month-to-month basis. Rent in the amount of \$700.00 per month was payable on the 1st day of each month and was increased to \$1,200.00 per month in September, 2016 as a board-and-room tenancy; the tenant was consuming the landlord's food and alcoholic beverages. The tenant still resides in the rental unit, which is a self-contained suite. No security deposit or pet damage deposit was collected by the landlord.

The tenant failed to pay any rent for April or May, 2017, and on April 13, 2017 the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. The landlord testified that he was going to enter the rental unit to put it on the table, but his counsel advised him to post it to the door. A copy of the 1st of 2 pages has been provided for this hearing by the tenants, and it is dated April 13, 2017 and contains an effective date of vacancy of April 23, 2017 for unpaid rent in the amount of \$2,400.00 that was due on April 1, 2017. That amount included rent for the following month, which is indicated in the notice, because the landlord didn't believe the tenant would pay that either.

The landlord further testified that he purchased the property in September, 2014, and agreed to rent the basement suite to the tenant and the landlord and the tenant's agent were subsidizing the tenant so he could save money to buy his own home. The landlord is the sole owner, and no one else is on title.

The tenant was more like a roommate than a tenant, meeting the landlord for coffee and all meals.

The landlord has vacated the rental home and the landlord and tenant's agent are currently in litigation before the Supreme Court of British Columbia. The tenant has since changed the locks to the rental unit without the landlord's permission and has not provided the landlord with a key.

The tenant's agent testified that she continues to reside in the upper level of the home, and the tenant living in the basement suite is her son. There was no verbal agreement for a fixed term tenancy for her son.

Meals were provided to her son, and if the tables were turned, she would not have denied meals to the landlord's son.

The landlord entered the basement suite and started video taping. Police accompanied him and the landlord was told by police to get out.

Only 1 page of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was posted to the door of the rental unit.

The tenant started paying rent in the amount of \$1,200.00 starting August 1, 2016 until March 1, 2017. The notice to end the tenancy says that the tenant didn't pay rent for March, but the landlord knows it was in the joint account and the landlord drained the account. The tenant has been paying rent to the tenant's agent and there are no rental arrears.

The tenant's agent also testified that the locks to the rental unit were changed without the landlord's permission, however since the parties are still in litigation respecting the home and other matters, the tenant's agent is a co-landlord, and seeks an order that the landlord not enter the basement suite. The tenant's agent does not appear on title and the mortgage is not in her name.

Analysis

With respect to the tenant's application for more time than prescribed to dispute a notice to end the tenancy, the *Residential Tenancy Act* states that documents served by posting them to the door of the rental unit are deemed to have been served 3 days after posting. In this case, the parties agree that the landlord posted the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit on April 13, 2017, which is deemed to have been served April 16, 2017. Such a notice must be disputed

within 5 days after service, and the tenants filed the application on April 20, 2017, which is within 5 days, and I find that no additional time is required.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. In this case, the tenant's agent testified that only 1 of 2 pages was served, and the landlord was not able to say whether or not both pages were served, and that the second page was just an instruction sheet and he didn't think it was important. The *Act* requires both pages be served, and only page 1 of the 2-page form has been provided for this hearing. I can only deduct that page 1 alone was served, which is not sufficient service, and I therefore cancel the notice.

The parties agree that rent was originally \$700.00 per month. There is no written tenancy agreement, and the tenant's agent testified that her son, who lives in the rental unit, has been paying the tenant's agent every month and there are no rental arrears. There is no evidence before me of how much the tenant's agent has been collecting from the tenant, however the tenant's agent testified that she is a co-landlord, and if that is the case, the tenant's agent has a conflict of interest. The tenant's agent also enjoyed the rent money paid by the tenant. The tenant paid his mother an amount in excess of the rent originally agreed upon, but I am not satisfied that it was a rent increase but a contribution to his mother and her common-law spouse for food and alcohol.

In the circumstances, I find that rent is \$700.00 per month, food and alcohol not included.

Further, in the absence of any testimony or evidence of how much the tenant's agent has been collecting from her son, I am not satisfied that the tenant has established the amount of rent that went to the landlord or to the tenant's agent. The tenant's agent testified that the rental income went into a joint account, which has been enjoyed by both parties. Therefore, I find that any money collected has been enjoyed by the landlord and the tenant's agent. I am not satisfied that the tenant has established any monetary claim.

The parties disagree on whether or not the landlord entered the rental unit unlawfully. However, there is no question that the tenant changed the locks to the rental unit, and I order the tenant to provide the landlord with a key to the rental unit by June 5, 2017. I further order the landlord to not enter the rental unit except in accordance with the *Act* which states as follows:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenant in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 13, 2017 is hereby cancelled and the continues.

The tenant's application disputing a rent increase is dismissed.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby order the tenant to comply with the *Residential Tenancy Act* by providing the landlord with a key that gives access to the rental unit by June 5, 2017.

I hereby order the landlord to comply with Section 29 of the *Residential Tenancy Act* as set out above.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 as recovery of the filing fee, and I order that the tenant be permitted to reduce rent by that amount for a future month or may otherwise recover it.

This order is final and binding and may be enforced.

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 30, 2017

Residential Tenancy Branch