Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LIGHTHOUSE REALTY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, CNR, MNR, MNDC, OLC, ERP, RP, PSF, RPP, LRE, LAT, AS, RR, O, SS; OPR, MNR, MNDC, FF

Introduction

This hearing was originally scheduled to deal with the tenant's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an order regarding a disputed additional rent increase, pursuant to section 43;
- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 10, 2017 ("10 Day Notice"), pursuant to section 46;
- a monetary order for the cost of emergency repairs to the rental unit, pursuant to section 33;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlords to make emergency and regular repairs to the rental unit, pursuant to section 33;
- an order requiring the landlords to provide services or facilities required by law, pursuant to section 65;
- an order requiring the landlords to return the tenant's personal property, pursuant to section 65;
- an order to suspend or set conditions on the landlords' right to enter the rental unit, pursuant to section 70;
- authorization to change the locks to the rental unit, pursuant to section 70;
- an order allowing the tenant to assign or sublet because the landlords' permission has been unreasonably withheld, pursuant to section 65; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- other unspecified remedies; and
- authorization to serve documents or evidence in a different way than required by the *Act* pursuant to section 71.

This hearing also dealt with the landlords' application pursuant to the *Act* for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The "first hearing" on May 2, 2017 lasted approximately 39 minutes and the "second hearing" on June 16, 2017 lasted approximately 98 minutes.

Landlord PS ("landlord") attended both hearings. "Landlord RM" attended the second hearing only. The tenant attended both hearings. "Witness CH" appeared at the first hearing only to testify on behalf of the tenant; however, the witness did not testify because the first hearing did not proceed and the witness was excluded from the first hearing at the outset.

At both hearings, all parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant spoke for most of the time during both hearings.

At both hearings, the landlord confirmed that she was the property manager for the other two landlords named in these applications and that she had authority to speak on their behalf as an agent. At the second hearing, landlord RM confirmed that he was the manager of the landlords named in these applications and that he had authority to speak on their behalf as an agent. In this decision, "landlords" refers to all three landlords named in these applications.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on May 2, 2017 was adjourned because the tenant was ill and undergoing medical treatment and the landlord consented to the tenant's adjournment request. During the first hearing, the landlord provided a file number for the landlords' application, stating that the application had not been joined to be heard together with the tenant's application but instead was scheduled to be heard on May 29, 2017 at 9:30 a.m. before me. The file number for the landlords' application appears on the front page of this decision. By way of my interim decision, dated May 2, 2017, I adjourned the tenant's application to be heard together with the landlords' application on June 16, 2017, and cancelled the May 29 hearing date for the landlords' application.

At the first hearing, I provided specific instructions to both parties to serve and re-serve evidence in accordance with specific deadlines. I issued an interim decision, dated May 2, 2017, adjourning the first hearing and outlining these specific instructions.

At the first hearing, the landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application.

At the first hearing, the tenant confirmed receipt of the landlords' application for dispute resolution but not their written evidence package. At the second hearing, the tenant confirmed receipt of the landlords' written evidence package in accordance with the timeline and directions in my interim decision. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' application and written evidence package.

At the second hearing, the landlord confirmed receipt of further evidence submitted by the tenant after the first hearing. The evidence was received by me at the Residential Tenancy Branch ("RTB") and the landlords on June 1 and 2, 2017. As per my interim decision, the tenant was required to serve her evidence to the RTB and the landlords by June 1, 2017. However, the landlord consented to me considering the tenant's late June 2, 2107 evidence because she had reviewed and responded to it. In accordance with sections 88 and 90 of the *Act*, I find that the landlords were duly served with the tenant's two additional written evidence packages from June 1 and 2, 2017 and I considered them at the hearing and in my decision because the landlord consented and had a chance to review and respond to it. I find that the delay of one day late was minimally prejudicial to the landlords.

At the second hearing, I notified both parties that I could not consider the tenant's third additional written evidence package of thirteen pages, submitted to the landlord and the RTB late on June 15, 2017, the day before this hearing. The landlord said that she had received it but did not have a chance to review or respond to it. I had not received it at the time of the hearing on June 16, 2017 at 9:30 a.m. The evidence was received by the RTB on June 16, 2017 by way of facsimile and processed and forwarded to my attention on June 19, 2017, after the hearing was over. I informed the tenant that she was well aware of my directions at the first hearing that her evidence was due by June 1, 2017 and she agreed and consented to this timeline during the first hearing. I further notified the tenant that because the landlord had not reviewed or responded to the late evidence, I could not consider it. The tenant said that she submitted the evidence late because she was ill, which she was well aware of during the first hearing, since it was adjourned for that reason. The tenant also had a witness at the first hearing, who

assisted her with her application and collecting mail, so he or another agent could have submitted this evidence on the tenant's behalf by June 1, 2017. I find that the significant delay, where the landlords received the evidence the day before the hearing, to be highly prejudicial.

Preliminary Issue – Substituted Service Orders

During the first hearing, both parties agreed to provide each other with all tenancy-related documents for the remainder of this tenancy, by way of email, rather than any other methods in sections 88 or 89 of the *Act*.

Accordingly, I made an order for substituted service, pursuant to section 71 of the *Act*, for both parties to serve all tenancy-related documents for the remainder of this tenancy by way of email. The parties' email addresses appear on the front page of this final decision.

Issues to be Decided

Is either party entitled to the relief requested?

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 both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2013. Monthly rent in the current amount of $985.00 is payable on the first day of each month. A security deposit of $475.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord confirmed that she served the tenant with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 10, 2017 ("10 Day Notice"), on the same date, by way of registered mail. The landlords provided a Canada Post receipt and tracking number with their application. The Canada Post website for the tracking number indicates that the mail was received and signed for on March 17, 2017. The tenant said that someone else picked up her mail and told her about the notice but she does not recall the date. She said that she was out of the country between January 9, 2017 and June 1, 2017 and she did not tell the landlords because she did not know

how long she would be away for; during this time, the tenant said that someone else checked her mail for her. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' 10 Day Notice on March 15, 2017, five days after its registered mailing.

The landlords issued the 10 Day Notice for unpaid rent of $35.00 due on March 1, 2017. The effective move-out date on the notice is March 27, 2017. The landlords seek an order of possession, a monetary order of $35.00 for unpaid March 2017 rent, and recovery of the $100.00 filing fee.

The tenant seeks to cancel the landlords' 10 Day Notice, to dispute a rent increase, for repairs, services and facilities, orders for the landlord to comply and return personal property, authorization to sublet and change the locks, orders to restrict the landlords' right to enter the rental unit, substituted service, and monetary orders.

The tenant disputes the landlords' 10 Day Notice, claiming that the $35.00 amount on the notice indicates a rent increase that was implemented early in March 2017 when it should not have been implemented until April 2017. She said that she received a Notice of Rent Increase, dated November 25, 2016 ("NRI") from the landlord to increase the rent from $950.00, the original amount indicated in the parties' written tenancy agreement when she began her tenancy, by $35.00 to a total of $985.00. The tenant explained that the rent increase was a legal amount and her rent had not been increased previously, but it was implemented earlier than the three months' notice that she is entitled to under the *Act*.

The landlord claimed that the NRI was sent to the tenant by registered mail on November 25, 2016, it was deemed received on November 30, 2016, and payable as of March 1, 2016 as indicated on the notice. The tenant said that she had someone checking her mail during this time because she was out of town and that the NRI was received from the landlord on December 12, 2016, so it was not effective until April 1, 2016. On this basis, the tenant said that there was no unpaid rent of $35.00 due on March 1, 2017, because it should have been implemented on April 1, 2017. The tenant further claimed that the landlord advised her in an email that the rent increase was due on April 1, not March 1. The landlord said that she made a mistake quoting April 1, 2017 and sent a reminder email to the tenant in January 2017 that the increase was due on March 1, 2017 and the NRI clearly stated March 1, 2017, as the effective date.

Analysis

Landlords' Application

In accordance with section 46(4) of the *Act*, the tenant must file her application for dispute resolution within five days of being deemed to have received the 10 Day Notice. In this case, the tenant was deemed to have received the 10 Day Notice on March 15, 2017 and filed her application to dispute it on March 22, 2017. Accordingly, I find that the tenant's application was late, as it was not filed within the five day limit under the *Act*. The tenant did not apply for more time to cancel the 10 Day Notice. Where a tenant does not dispute the notice in time, she is presumed to have accepted the notice and must move out by the effective date on the notice. Therefore, the tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply.

In any event, I find that the tenant failed to pay the full rent due on March 1, 2017, which included the $35.00 rent increase amount as per the NRI, within five days of being deemed to have received the 10 Day Notice. I find that the tenant was deemed to have received the landlords' NRI on November 30, 2016, five days after it was sent by registered mail on November 25, 2016, as per section 90 of the *Act*. This made the NRI effective as of March 1, 2016, not April 1. According to the Canada Post website for the tracking number, a notice card for pick-up was left for the tenant as of November 28, 2016, three days after it was mailed to her on November 25, 2016. The tenant said that she had someone checking her mail during this time because she was out of town. However, the tenant did not tell the landlords that she would be out of town or that she would not be able to receive documents at her regular mailing address. I find that the NRI clearly stated that the rent increase was due on March 1, 2017 and the tenant received the notice indicating that date. Therefore, I dismiss the tenant's application to dispute the landlords' NRI, as I find that the rent increase is a proper amount under the *Regulation*, as it was within the 3.7% allowed for the year 2017.

In accordance with section 46(5) of the *Act*, the failure of the tenant to apply to dispute the 10 Day Notice in time or to pay the full rent within five days, led to the end of this tenancy on March 27, 2017, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by March 27, 2017. As this has not occurred, I find that the landlords are entitled to a ten (10) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*. I issue a lengthier order of possession rather than the standard two (2) day order, because the tenant cited serious personal health concerns and is undergoing continuous health treatment.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the landlords are entitled to rent arrears of $35.00 for March 2017. Both parties agreed that the tenant failed to pay this amount to the landlords. As noted above, I found that the NRI was effective as of March 1, 2017 and the tenant owed this $35.00 for an increase in rent.

As the landlords were successful in their application, I find that they are entitled to recover the $100.00 filing fee from the tenant.

The landlords continue to hold the tenant's security deposit of $475.00. No interest is payable on the deposit during this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain $135.00 from the tenant's security deposit in full satisfaction of the monetary award. The remainder of the tenant's security deposit, totalling $340.00, is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

Tenant's Application

With the exception of the substituted service order granted on the front page of this decision, the remainder of the tenant's application is dismissed without leave to reapply.

As this tenancy is ending, I dismiss the tenant's application for emergency and regular repairs, services and facilities, a future rent reduction, permission to sublet the unit, other unspecified remedies and orders for the landlords to comply. I find that the tenant did not identify any emergency repairs are required before she vacates.

I find that the tenant has already changed the locks to the rental unit without the landlords' permission and without an order from the RTB, contrary to section 31(3) of the *Act*. I order the tenant to provide the landlord with access to the rental unit as per section 29 of the *Act* and I dismiss her application to restrict the landlords' right to enter the rental unit.

I dismiss the tenant's claim for a past rent reduction, a monetary order for the cost of emergency repairs and for other damages and losses. The tenant was given leave to reapply for her monetary claim of $25,000.00 during her last RTB hearing more than

one year ago on February 16, 2016, with a different Arbitrator. The file number for that hearing appears on the front page of this decision. She was told that she did not provide sufficient evidence or a breakdown of her $25,000.00 monetary claim during that time. I find that the tenant had more than enough notice, time and opportunity to resubmit this claim but failed to do so properly at this hearing.

The tenant applied for a $25,000.00 monetary order and did not provide any breakdown for the above figure. She said that she applied for the maximum amount that she could. She included this figure in the "total" section of the monetary order worksheet but did not provide any invoices, receipts, or estimates to support this claim. She did not provide work records for missing time from work, as she claimed. She did not provide medical records from her doctors indicating that the landlords caused her stress which in turn caused her cancer, kidney failure and autoimmune disorder, as she alleged during the hearing.

The tenant said that she was unable to use the shower at the rental unit and is entitled to a loss of use of her rental unit because the landlord failed to complete repairs ordered at the last RTB hearing. The landlord disputed these claims, stating that she sent in a plumber who completed an assessment and report, indicating no leaks or issues with the shower. The tenant did not even live at the rental unit for almost five months from January 9 to June 1, 2017, and cannot claim for a loss of use during the time when she was voluntarily away.

I dismiss the tenant's claim for a return of her personal property, as she claimed that the landlords stole her $2,000.00 store gift card. The landlord denied the tenant's allegations. I informed the tenant during the hearing that she can file a report with the police for the stolen gift card, as she claimed that she already had open police files relating to the landlords for this tenancy.

Conclusion

I grant an Order of Possession to the landlords effective ten (10) days after service on the tenant. Should the tenant or anyone 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.

I order the landlords to retain $135.00 from the tenant's security deposit in full satisfaction of the monetary award.

The remainder of the tenant's security deposit, totalling $340.00, is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

With the exception of the substituted service order granted on the front page of this decision, the remainder of the tenant's application 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: June 22, 2017

Residential Tenancy Branch