



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR; CNR

Introduction

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

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

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 1, 2016 ("10 Day Notice"), pursuant to section 46.

The landlord and her agent (collectively "landlord"), the two tenants, "male tenant" and female tenant ("tenant"), and the tenants' advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that her agent could speak on her behalf and the tenant confirmed that the tenants' advocate could speak on the tenants' behalf at this hearing. The tenant confirmed that she had permission to speak on behalf of the male tenant at this hearing.

This hearing lasted approximately 91 minutes in order to allow both parties to fully present their submissions, negotiate a settlement of a portion of these applications and due to repeated interruptions by the tenant during the hearing.

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

The landlord confirmed that the tenants' application, including written evidence, was not received from the tenants. The landlord confirmed that she found out from the Residential Tenancy Branch ("RTB") that the tenants had filed an application because the landlord's direct request (ex-parte) application was rejected because the tenants

had filed an application. The tenant said that she personally served the landlord with her application and written evidence on June 9, 2017.

As the tenants did not provide any witness evidence for service of their application and the landlord denied receipt, I notified the tenant that I could only consider the tenants' application, the written tenancy agreement and the 10 Day Notice because the landlord knew about the hearing from the RTB and had submitted the tenancy agreement and 10 Day Notice with her own written evidence package. I notified the tenant that I could not consider the remainder of the tenants' written evidence, most of which was irrelevant and a lengthy personal explanation about the entire history of their tenancy.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

At the outset of the hearing, I advised both parties that one person was to speak at any given time, that parties were not to interrupt while others were speaking, and that both parties would be given a chance to speak. Throughout the hearing, the tenant repeatedly interrupted the landlord and me. The tenant repeatedly complained and raised her voice during the hearing and would not listen to my comments or questions. I provided the tenant with ample time during the hearing in order to present her submissions, as most of the hearing time was spent listening to her lengthy stories about her dissatisfaction with this tenancy and the landlord.

The tenant displayed disrespectful and inappropriate behaviour throughout this hearing. I repeatedly warned the tenant to stop her inappropriate behaviour but she continued. However, I allowed the tenant to attend the full hearing, despite her inappropriate behaviour, in order to provide her with an opportunity to present her application, respond to the landlord's application and negotiate a settlement.

I caution the tenant not to engage in the same behaviour at any future hearings at the Residential Tenancy Branch ("RTB"), as this behaviour will not be tolerated and she may be excluded from future hearings and decision will be made in her absence.

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase her monetary claim to \$3,000.00. The tenant confirmed that she was aware that rent is due as per her tenancy agreement. The tenants continue to reside in the rental unit, despite the fact that a 10 Day Notice required them to vacate earlier. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlord would pursue all unpaid rent at this hearing. The tenant also testified about rent from May to July 2017 at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claims for increased rent.

Background and Evidence

Both parties agreed that monthly rent in the amount of \$1,200.00 is payable on the last day of each month in advance of the following month. Both parties signed a written tenancy agreement and a copy was provided for this hearing. Both parties agreed that the tenants are entitled to use the upper portion of the rental property, not the basement unit.

The landlord seeks to recover unpaid rent of \$600.00 for May 2017 and \$1,200.00 for each of June and July 2017. The tenant said that she paid \$600.00 in cash to the landlord for May 2017 rent and her friend who was living in the basement of the same property paid the remaining \$600.00 on the tenants' behalf to the landlord. The landlord said that she had a separate agreement for the basement occupant to pay the landlord \$1,200.00 for rent and that nothing was paid on behalf of the tenants for May 2017 rent.

The tenant said that the landlord did not provide her with any receipts for cash rent payments from May to July 2017. She said that she paid \$1,400.00 on June 1, 2017 to the landlord for June rent of \$1,200.00 and \$200.00 towards May 2017 rent. She claimed that she paid \$600.00 on July 10, \$300.00 on July 16 and \$300.00 on July 18 towards July 2017 rent of \$1,200.00. The landlord denied the above rent payments. The tenant said that the male tenant witnessed the cash rent payments. The male tenant testified that he saw the tenant pay cash rent to the landlord but he did not know the dates.

Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Analysis

Decision regarding Landlord's Monetary Claim

As the parties were unable to settle the unpaid rent issue, they asked that I make a decision about it.

The male tenant did not know the dates or amounts of the rent payments supposedly made by the tenant to the landlord. The landlord denied receipt of the rent payments. The tenants' advocate did not witness any rent payments. I do not accept that occupants with a different tenancy for the separate basement unit paid the rent on behalf of the tenants for the upper floor of the rental property. The tenants did not show entitlement under the *Act* to deduct any amounts from rent.

Pursuant to section 67 of the *Act*, I award the landlord \$1,200.00 in unpaid rent for each month from June to July 2017, totaling \$2,400.00. I further award the landlord \$600.00 for unpaid rent for May 2017. I find that the tenants did not pay rent for the above time periods while occupying the rental unit.

Settlement of End of Tenancy 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 and 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 applications:

1. The tenants agreed to pay the landlords rent of \$1,200.00 per month by the last day of each month in advance of the following month, for a tenancy to occupy only the top floor, not the basement of the rental property;
2. The tenants prefer to pay the landlord rent by money order each month;

3. Both parties agreed that this tenancy will continue as per the terms of the original written tenancy agreement in the event that the tenants abide by condition #1 above. In that event, the landlord's 10 Day Notice, dated June 1, 2017, is cancelled and of no force or effect;
4. Both parties agreed that this tenancy will end pursuant to a ten (10) day Order of Possession, which expires on July 31, 2018, if the tenants do not abide by condition #1 above;
5. Both parties agreed that the tenants will have access to the washer and dryer in the laundry room of the basement at the rental property in order to do laundry only;
6. The tenants agreed to remove their scooter and other personal belongings from the basement at the rental property by August 31, 2017;
7. Both parties agreed that the tenants will remove the cable television hookups from the basement at the rental property by August 31, 2017;
8. Both parties agreed that the landlord will have immediate and full access to the basement at the rental property because there is no current tenancy existing there and the tenants only have limited access to the basement as per the conditions above;
9. The tenants agreed to pay 50% and the landlord agreed to pay 50% of the total water, electricity, and gas utilities at the rental property beginning on August 1, 2017;
 - a. Both parties agreed that there is no retroactive compensation for water, electricity, or gas utilities payable to the tenants by the landlord, prior to August 1, 2017;
10. Both parties agreed that the water, electricity, and gas utilities will remain in the tenants' names and the landlord will reimburse the tenants for 50% of the total cost beginning on August 1, 2017, within 7 days of receipt of the water, electricity, and gas bills from the tenants;
11. The landlord agreed to install a door with a secure lock between the tenants' rental unit and the basement at the rental property and to provide the keys for the lock to the tenants by July 31, 2017, in order for the tenants to have limited access to the basement as per the conditions above;
12. The landlord agreed to inspect the dishwasher, oven, refrigerator and bathroom leak at the tenants' rental unit and the washer and dryer in the basement of the rental property by August 7, 2017;
13. Both parties agreed that this settlement agreement constitutes a final and binding resolution of their applications at this hearing, with the exception of the unpaid rent issue.

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

Conclusion

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue the attached ten (10) day Order of Possession to be used by the landlord **only** if the tenant(s) do not abide by condition #1 of the above settlement. As advised to both parties during the hearing, this **ORDER OF POSSESSION EXPIRES ON July 31, 2018** and it cannot be served upon the tenant(s) after **July 31, 2018**. The tenant(s) must be served with this Order in the event that the tenant(s) do not abide by condition #1 of the above settlement. 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.

In the event that the tenants abide by condition #1 of the above settlement, I find that the landlord's 10 Day Notice, dated June 1, 2017, is cancelled and of no force or effect. In that event, this tenancy continues as per the terms of the original written tenancy agreement until it is ended in accordance with the *Act*.

I issue a monetary Order in the landlord's favour in the amount of \$3,000.00. The tenant(s) must be served with a copy of this Order. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: July 28, 2017

Residential Tenancy Branch