



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, MNDCT, ERP, LAT, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order regarding a disputed additional rent increase pursuant to section 43; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to make submissions, call witnesses and cross-examine one another.

As both parties were present I confirmed service of documents. The parties testified that they were each in receipt of all of the necessary materials. I find that the tenants were served with the landlord's 1 Month Notice and evidence, and the landlord was served with the tenants' application for dispute resolution and evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to a monetary award as claimed?

Should the tenants be authorized to change the locks to the rental unit?

Should the landlord be ordered to make repairs or emergency repairs to the rental unit?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Should an order be made regarding a disputed rent increase?

Are the tenants entitled to recover the filing fee for this application from the landlord?

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 tenants' claims and my findings around each are set out below.

The tenant MG first moved into the rental unit in July, 2013. There have been a number of written tenancy agreements throughout the course of the tenancy. The most recent tenancy agreement was signed by the parties on August 27, 2017 and sets out that rent is \$2,500.00 monthly, payable on the first.

On the 1 Month Notice of October 27, 2017, the landlord cited the following reasons for the issuance of the Notice:

Tenant is repeatedly late paying rent.

Tenant has allowed an unreasonable number of occupants in the unit/site

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

The landlord submitted into written evidence copies of e-transfer notices showing the rent being paid after the first for November, 2016 and February, March, April, May, June, July, August and October, 2017.

The tenant argued that the landlord had accepted late payment in the past and therefore is estopped from seeking to end the tenancy on the basis of late rent payments. The landlord testified that he has not waived his right to payment of rent by the first pursuant to the tenancy agreement. The landlord said that he has never informed the tenants that late payment is acceptable.

The parties gave evidence that the tenants are operating an AirBnB business in the rental unit and have allowed numerous individuals to stay in the suite during the past years. The landlord testified that they have never consented to the AirBnB and by allowing so many guests into the rental unit on a regular basis the tenants have caused significant disturbance to the landlord and other occupants of the business. The landlord further submits that the operation of an AirBnB without informing the landlord has put the property at significant risk.

The tenants testified that prior to signing the new tenancy agreement on August 27, 2017, there was an earlier tenancy agreement for a fixed-term tenancy with a monthly rent of \$1,900.00 which ended on July 31, 2017. The tenants say that after the fixed-term the landlord accepted rent in the amount of \$1,900.00 for August, 2017. The tenants submit that the new tenancy agreement of August 27, 2017 setting a monthly rent of \$2,500.00 is an illegal rent increase rather than a new agreement. The tenants seek a monetary award to recover the \$600.00 increase in rent since September, 2017 to the date of the hearing, \$3,000.00.

The tenants gave evidence regarding some of the issues they find with the condition of the rental unit. They say that the locks on the front door should be replaced and a dead bolt is required. The tenants testified that there are rats and possibly raccoons in the attic of the rental unit.

The landlord testified that they have taken reasonable efforts to address the issues and perform repairs and maintenance to the rental unit as necessary.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord has indicated a number of reasons for the 1 Month Notice including repeated late payment of rent. Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number to justify a notice to end tenancy. I accept the parties' evidence that the tenants have been late paying rent for the majority of the past year.

The tenants submit that the landlords have accepted the late rent payment and are estopped from enforcing the terms of the tenancy agreement. Estoppel is a legal principle whereby a party is barred from enforcing a contractual right when it is inequitable to do so due to the party's previous conduct or representations.

In order to successfully raise an estoppel defence, the party seeking to defeat the rights of the other must show:

1. that the party seeking to enforce their legal rights, took some action, whether by representation or conduct, with the intention that the other party rely on that action; and
2. the other party relied on that action to its detriment changing their course of action based on the representation.

In the present case I find that there is insufficient evidence that the landlord agreed to accept late payment of rent creating an estoppel. The conduct of the landlord in not issuing an immediate 10-Day Notice to End Tenancy for Unpaid Rent is not conduct which I find to be a clear and unambiguous representation that the tenants may pay late rent under this tenancy. I find that the tenants have not met the evidentiary threshold necessary to establish a waiver and estoppel. If there was estoppel, it would be reasonable to expect that the tenants would have consistently paid the monthly rent after the first of every month. However, the undisputed evidence of the parties is that the tenants did not always pay the rent after the first and paid the full rent by the first on December, 2016, January, 2017 and September, 2017. For these reasons, I find that there was no estoppel which prevents the landlord from requiring full rent payment by the first of the month as set out in their tenancy agreement.

I accept the undisputed evidence of the parties that the tenants have been repeatedly late paying rent. Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenants' application.

Section 55(1) of the *Act* reads as follows:

- 55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (a) the landlord makes an oral request for an order of possession, and*
 - (b) the director dismisses the tenant's application or upholds the landlord's notice.*

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice clearly provides the reasons for ending the tenancy.

As I have dismissed the tenants' application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession

As I have issued an Order of Possession ending this tenancy I find it unnecessary to make a finding on the portions of the tenants' application seeking repairs or authorization to change the locks to the rental unit. These portions of the tenants' application are dismissed.

The tenants submit that the rent was increased from \$1,900.00 under their previous tenancy agreement to \$2,500.00 when they entered into a new agreement on August 27, 2017. The tenants characterize the new tenancy agreement as an illegal rent increase. I do not find that the evidence supports the tenants' interpretation of events.

When the earlier fixed-term tenancy ended on July 31, 2017 the tenancy continued on a month-to-month basis. The rent remained \$1,900.00 and the tenancy continued under the terms of the earlier tenancy agreement. The parties entered into a new tenancy agreement on August 27, 2017 whereby the parties agreed to new terms including monthly rent in the amount of \$2,500.00. There was no requirement that the parties enter into a new tenancy agreement. The parties could simply have continued under the terms of the earlier tenancy agreement with rent in the amount of \$1,900.00 until increased in accordance with the *Act*. Instead, the parties exercised their right to contract and entered into a new agreement. I find the tenants have provided insufficient evidence in support of their submission that they did not enter into this new tenancy agreement freely.

I find that the parties entered into a valid new tenancy agreement on August 27, 2017 which provides that monthly rent is \$2,500.00. I find that this is an agreement entered by the parties and this is not a rent increase as defined under the *Act*. I find that there was no rent increase to be disputed, this was a contract entered by the parties setting a new rent amount. Consequently, I find that there is no basis to issue a monetary award to the tenants for the disputed rent.

As the tenants' application was not successful the tenants are not entitled to recover the filing fee for their application from the landlord.

Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants 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.

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: January 15, 2018

Residential Tenancy Branch