



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF, LRE, AAT, LAT

Introduction

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

- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks to the rental unit pursuant to section 70; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

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

The individual identified as the landlord in the tenants' application confirmed that he received a copy of the tenants' dispute resolution hearing package handed to him by Tenant HJ in sufficient time to prepare for this hearing. On this basis, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Neither party provided any written evidence.

Legal counsel representing the landlord (in that person's role as the administrator of the estate of his late brother which owns this rental property) and as legal counsel for the estate as identified above, advised that the landlord does not actually own this rental property. As the administrator of the estate and as the legal counsel for that estate were in attendance at this hearing, I am satisfied that those in attendance on the landlord's behalf represent the landlord's interests in this matter and had the legal authority to exercise the rights and obligations as the tenants' landlord.

Issues(s) to be Decided

Should orders be issued with respect to any of the requests identified in the above-noted actions sought by the tenants?

Background and Evidence

The tenants testified that they signed a tenancy agreement with the then owner of this property, the deceased brother of the individual identified by them as the landlord in their application on October 15, 2017. When the landlord's representatives challenged this statement, Tenant AT advised that they were only referring to an Intent to Rent form created on Ministry of Social Development letterhead. Both parties eventually agreed that the tenants had an oral agreement with the now deceased owner of this rental property. Monthly rent is set at \$1,100.00, payable in advance on the first of each month. The tenants are responsible for all utilities.

The tenants maintained that the landlord cut off their access to a source of water and that they only have heat by way of space heaters as the furnace no longer works.

The landlord's legal counsel gave undisputed testimony that the gas company had taken action to withdraw gas service to this rental property because the tenants had failed to pay their gas bill. As such, the landlord accepted no responsibility for the tenants' request to restore the furnace connection to this rental unit.

Although Tenant HJ maintained that there had been no change to the lock in the rental unit, the landlord testified that the tenants had changed the locks such that the landlord's key could no longer access the rental unit. The landlord also testified that the tenants had installed a bolt preventing the landlord from accessing the rental unit.

The landlord's legal counsel testified that two 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notices) were posted on the tenants' door on January 5, 2018. These 10 Day Notices identified rent of \$1,100.00 still owing for both December 2017 and January 2018. Tenant AT confirmed receipt of these 10 Day Notices, and also confirmed that they had not paid anything towards their rent, as they consider the landlord's withdrawal of heat and water as sufficient reason to withhold paying rent. Tenant AT also confirmed that the tenants have not filed an application to cancel these 10 Day Notices.

Analysis

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 or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on February 15, 2018, by which time the tenants will have surrendered vacant possession of the rental unit to the landlord.
2. In the event that the tenants abide by their commitment to end their tenancy in accordance with the terms of Clause 1 of this settlement agreement, the landlord agreed to not pursue any monetary claim for unpaid rent arising out of this tenancy.
3. In the event that the tenants do not abide by their commitment to end their tenancy in accordance with the terms of Clause 1 of this settlement agreement, the tenants agreed that they will become responsible for paying the landlord a total of \$2,750.00 in rent that would cover the period of their tenancy ending on February 15, 2018.
4. The tenants agreed to allow the landlord and the landlord's representatives access to the rental unit upon receiving 24 hours written notice to do so as a means of assessing the reasons for the lack of water to this rental unit.
5. The tenants also agreed to provide access to the landlord and the landlord's representatives for the purpose of undertaking any repairs to the rental plumbing in the rental unit so as to enable the tenants to obtain water to the rental unit.
6. The landlord agreed to undertake repairs to the plumbing system of this rental property to enable the tenants to obtain a source of water for the rental unit.
7. The landlord also agreed to provide 24 hours written notice on any occasion when access to the rental unit is required for non-emergency purposes.
8. The tenants agreed to ensure that the landlord has a functioning key and a way of accessing the rental unit in an emergency by delivering a functioning key to the office of the landlord's legal counsel by Monday, January 22, 2018 at 12:00 p.m.
9. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenants' application and all issues currently in dispute arising out of this tenancy and that they did so of their own free will and without any element of force or coercion.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord **only** in the event that the tenants do not vacate the rental premises in accordance with their agreement by 1:00 p.m. on February 15, 2018. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with an Order as soon as possible following their failure to vacate the rental premises by 1:00 p.m. on February 15, 2018. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$2,750.00, **only to be exercised and to come into effect** in the event that the tenants do not vacate the rental unit by 1:00 p.m. on February

15, 2018. I deliver this Order to the landlord in support of the above agreement for use in the event that the tenants do not abide by the terms of the above settlement. Again, this Order is to be served to the tenants as soon as possible following their failure to vacate the rental premises by 1:00 p.m. on February 15, 2018. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. In the event that the tenants fail to vacate the rental unit by 1:00 p.m. on February 15, 2018, the landlord is also at liberty to pursue any monetary losses incurred by the landlord resulting from the tenants' overholding beyond that date.

I order the tenants to permit the landlord and his representatives to gain access to the rental unit for the purposes of assessing and, if necessary, repairing the plumbing system in this rental property so as to enable the tenants to obtain a source of water upon receipt of a 24 hour written notice to do so. I order the landlord to undertake any plumbing repairs required to ensure that the tenants obtain a source of water for this rental unit.

I order the landlord to issue 24 hour written notices to the tenants for all non-emergency entries to the tenants' rental unit for the duration of this tenancy.

I order the tenants to provide the landlord with a functioning key to this rental unit, which enables the landlord to gain emergency access to the rental unit. To implement this order, the tenants are to deliver this key by 12:00 p.m. on January 22, 2018 to the office of the landlord's legal counsel who attended this hearing.

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 18, 2018

Residential Tenancy Branch