



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MND FF CNR ERP LAT LRE

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied for: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for damage (rental loss) pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied pursuant to the Act for: cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46; an order that the landlord make emergency repairs to the rental unit pursuant to section 33; 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 this hearing and were given an opportunity to provide evidence, testimony and submissions regarding the applications before me. The tenant confirmed receipt of the landlord's 10 Day Notice to End Tenancy as well as the landlord's Application for Dispute Resolution ("ADR"). The landlord confirmed receipt of the tenant's ADR but testified that they did not receive any documentary evidence from the tenant. The tenant testified that she was not aware that she was required to provide evidence to the other party. Based on the landlord's testimony that they did not receive the tenant's documentary evidence and the tenant's indication that she did not serve the landlord, I will not consider the materials submitted by the tenant for her application. However, I will accept and consider the testimony of the tenancy regarding the issues she has raised.

Background and Evidence

This tenancy began on November 1, 2016 and was set as a one year fixed term tenancy. A copy of the tenancy agreement was submitted for this hearing. The tenancy agreement indicates that the tenancy may transition to a month to month tenancy at the end of a fixed term. The current monthly rent is \$900.00 payable on the first of each month. The landlord confirmed that the landlord continues to hold a \$450.00 security deposit paid by the tenant at the outset of this tenancy.

The landlord testified that the tenant did not pay rent on November 1, 2017. As a result of the tenant's failure to pay rent, the landlord issued a 10 Day Notice to End Tenancy on November 6, 2017. The landlord provided undisputed testimony that the tenant has not paid the outstanding November 2017 rent. The landlord testified that the tenant has also not paid rent for December 2017 or January 2018.

The landlord also testified, supported by their documentary evidence submitted for this hearing, that the tenant signed a mutual agreement to end tenancy with an end to tenancy date of October 30, 2017. The landlord testified that the tenant currently owes \$2700.00 in rental arrears and continues to reside in the rental unit.

The tenant did not dispute the testimony of the landlord that she signed the mutual agreement to end the tenancy but submitted that she was forced to sign it as she had just woken up when the landlord's agent came with the agreement and so she wasn't really aware of what she was signing. The tenant also did not dispute that she has failed to pay rent for the months of November 2017, December 2017 and January 2018. The tenant testified that she wants to move out of the rental unit as soon as possible: that she has started to move her belongings out but that she has financial difficulties that are slowing down her progress.

The tenant testified that the landlord's agent has used the landlord's keys to come into the unit on a number of occasions. The landlord's agent did not dispute these claims by the tenant stating, "she was supposed to move out on October 30".

The tenant testified that, over the course of the past several months, the landlord's agent has removed all the doors from her rental unit including but not limited to; the sliding door to her patio; the door to the rooms in her home; and the door to her washroom. She testified that the only door that remains is the front entrance door from her rental unit to the common area of the building. The tenant testified that the removal

of the doors as well as the entrance to her unit by the landlord's agent are the main reasons that she hopes to vacate the rental unit as soon as possible.

The landlord's agent testified that, because the tenant was scheduled to vacate the rental unit on October 30, 2017, the doors to the unit were removed to paint. He confirmed that the doors were removed on November 6, 2017 and have not been returned to the rental unit as of the date of this hearing (January 25, 2017). The landlord testified that, with respect to the patio door, the landlord's discovered it was broken and it has not been replaced yet. The landlord testified that the replacement has taken approximately 10 weeks because the sliding door was over 30 years old. The landlord testified that they addressed the tenant'

Analysis

With respect to the tenant's application to cancel the landlord's 10 Day Notice and the landlord's application for an Order of Possession, the landlord has the burden of proving that the tenant has failed to pay rent. I find that the landlord has met their burden of proof and they have shown, with their testimony and documentary evidence as well as the tenant's own admission of failing to pay rent that the tenant failed to pay the November 2017 rent and the months following in accordance with the residential tenancy agreement and the Act. There is also no dispute between the parties that the tenant still has not paid her rental arrears.

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." Based on the undisputed evidence regarding non-payment of rent, I find that the tenant's application to cancel the 10 Day Notice should be dismissed and the landlord granted an Order of Possession for the rental unit.

I find that the landlord is also entitled an order that includes the tenant's unpaid rent arrears in the amount of \$2700.00 for 3 months of unpaid rent. As stated above, the tenant did not dispute that she has failed to pay rent however the tenant relied on the landlord's failure to comply with the Act as well as her financial circumstances to address why she has failed to pay rent.

The tenant applied for an order that the landlord's access to the unit be suspended or set with conditions as well as an order that the landlord make repairs to the premises as soon as practicable. Under most circumstances, this application by the tenant would be

considered moot: I have found that this tenancy should have ended with the issuance of the 10 Day Notice. However, I note that the tenant remains in the unit until the Order of Possession becomes effective. I accept the testimony of the tenant that the landlord's agent has entered her rental unit at will and with no notice or even a knock on the door. I find that the landlord has and will enter the residence without regard for section 29 of the Act while the tenant remains in the rental unit. I find that this level of invasion warrants direction to the landlord. Therefore, pursuant to section 70 of the Act, I make an order restricting the landlord's access to the rental unit to once per month until the tenant vacates the unit. When the landlord wishes to access the rental unit, he must provide 72 hours' notice and provide a reason to enter the residence.

The tenant also applied for emergency repairs. This portion of her application relates to the removal of the doors within the rental unit by the landlord. The landlord should consult the Residential Tenancy Act and the Residential Tenancy Policy Guidelines. I provide some information from Policy Guideline No. 1,

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property....

...In a multi-unit residential premises, in addition to providing and maintaining adequate locks or locking devices on all doors and windows of each individual unit within the premises, the landlord is responsible for providing adequate locks or locking devices on all entrances to common areas in the premises and on all storage areas.

It should be unnecessary to advise the landlord that he must provide doors within the residence and that the residence should continue to be provided as it was at the outset of the tenancy. The landlord must provide locking doors and windows at the exterior of the premises and, given that they existed at the outset of the tenancy, the landlord must provide doors to the washroom and other private areas, for example the bedroom. This is especially important when the landlord has taken the exterior sliding glass patio door for a period of approximately 10 weeks and, during that time, has left only plastic behind. Essentially, the rental unit has been left unsecure while the tenant has awaited her hearing to cancel the notice to end tenancy.

In making a determination regarding the removal of the doors from the rental unit, I rely on section 65 of the Act which states,

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

... (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

I find that the tenant is entitled to a rent reduction as a result of the significant reduction of the value of her tenancy and the serious loss of use of her rental unit due to the landlord's removal of the interior doors and a failure to repair and return the glass sliding patio door to the rental unit while the tenant continued to reside in the unit. Just as the tenant is obliged to pay rent regardless of a violation by the landlord, the landlord is still required to meet the obligations of a tenant in his rental unit prior to receiving any authorization from the Director to the contrary.

I find that the tenant's application provided information to suggest a loss of use claim and that these circumstances warrant a past rent reduction. Therefore, I find that the tenant is entitled to a rent reduction for December 2017 and January 2018 of 50% of the rent for a total amount of \$900.00.

As indicated earlier, it would be unsuitable to order the landlord to take steps to return the rental unit to its original condition given that the tenant is required to vacate almost immediately. It would be equally unsuitable to return the full amount of rent owed given the conditions that the tenant resided in for December 2017 and January 2018. The tenant's lack of proper secure and safe housing resulted in her attempting to withhold rent – which she is not entitled to do under the Act. As she was not entitled to withhold rent without the authorization of the Director, the landlord is granted a 2 day Order of Possession for the rental unit. As the tenant was not provided with a rental unit that met the standards that the landlord is required to provide, the landlord is not entitled to recoup the entirety of the outstanding rent.

The amount that the tenant is required to pay in outstanding rent to the landlord is reduced from the original amount owing of \$2700.00 to \$1800.00. The landlord's agent provided testimony that the landlord continues to hold the tenant's \$450.00 security deposit. Pursuant to section 72(2) of the Act, I find that the landlord is entitled to retain the tenant's security deposit plus any interest applicable to the security deposit. There is no interest payable for this period.

As the landlord and tenant were both only partially successful in their applications, I find that the landlord and tenant are responsible for their own filing fees paid for this application.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for November 2017	\$900.00
Rental Arrears for December 2017	900.00
Rental Arrears for January 2018	900.00
Less Reduction of Rent - door removal	-900.00
Less Security Deposit	-450.00
Total Monetary Award	\$1350.00

The landlord is provided with this monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: February 9, 2018

Residential Tenancy Branch