Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, MNDCT, FFT

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to sections 46 and 55;
- an order regarding the tenants' dispute of an additional rent increase by the landlord pursuant to section 43;
- 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 this application from the landlord pursuant to section 72.

The landlord's agents and the tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Landlord S.D. (the landlord) indicated that they would be the primary speaker for the landlord during the hearing and Tenant C.D. (the tenant) indicated that they would be the primary speaker for the tenants. The landlord and the tenants both had their own legal counsel to assist with their respective evidence submissions.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) which was sent by registered mail on September 10, 2018. In accordance with section 89 of the *Act,* I find that the landlord was duly served with the Application.

The landlord and tenant acknowledged receipt of each other's evidence which was exchanged by e-mail. In accordance with section 71 of the Act, which allows an Arbitrator

to find a document sufficiently served for the purposes of the *Act,* I find that the landlord and the tenants are duly served with the each other's evidence.

The tenant confirmed that they received a 10 Day Notice on September 06, 2018. In accordance with section 88 of the *Act,* I find the tenants were duly served with 10 Day Notice on September 06, 2018.

Preliminary Matter

Following opening remarks, counsel for the tenants requested an adjournment. Tenants' Counsel explained that there was another hearing between the parties regarding the disputed rent increase and a notice for cause to end tenancy to be heard the following week and requested this matter to be heard at that time.

The landlord's counsel strongly objected to this application for an adjournment as she stated that the matter to be heard the following week was primarily regarding a notice to end tenancy for cause. The landlord's counsel maintained that the matter of unpaid rent is a separate issue which could be addressed at this hearing and that there was no reason to wait another week for a resolution.

Residential Tenancy Branch Rules of Procedure provides guidance on the criteria that must be considered for granting an adjournment. Rule 7.9 explains, "Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment."

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

After considering counsels' submissions, I declined to adjourn the matter. I find that there is no greater likelihood of the matter being resolved due to an adjournment. As the hearing has not occurred regarding the dispute of a rent increase, I find that the arbitrator is not seized of that matter and it has not been determined yet. I find that the tenants disputed the rent increase on this Application and I can hear it at this time. I further find that the landlord would be prejudiced by an adjournment as it is their

position that they are incurring a loss of rent and an adjournment would potentially increase the loss that the landlord is incurring.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order regarding the dispute of an additional rent increase by the landlord?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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

Background and Evidence

Both parties agreed that this tenancy began on August 01, 2017, with renovations to be completed by the tenants on the manufactured home in lieu of rent until the renovations were complete or the parties agreed to amend the terms. The landlord and tenant agreed that there was no security deposit paid for this tenancy.

A copy of the signed 10 Day Notice, dated September 05, 2018, and identifying $1,600.00 in unpaid rent with an effective date of September 20, 2018, was provided in the evidence by both parties.

The landlord also provided in evidence:

- A copy of a document dated May 26, 2018, and signed by the landlord and the tenants in which it states that rent for June 2018 will be $1,000.00 and then $1,600.00 effective as of July 2018; and
- A copy of a text message exchange between the landlord and the tenant dated April 19, 2018, in which the landlord lets the tenant know that they will have to start charging rent and the tenant asks how much the landlords will be charging.

In addition to some of the items listed above, the tenants also provided in evidence a picture of the tenant's mobile phone showing an electronic transfer of funds to the landlord in the amount of $1,100.00 for September 2018 rent. On the tenants' application it indicates that the tenants are seeking compensation in the amount of $2,000.00 which is equal to $500.00 overpayment of rent for July 2018 and August

2018 as well as $1,000.00 for an engineering firm to inspect the rental unit due to concerns about the quality of the renovations completed.

The landlord's counsel submitted that the tenants and the landlord have a written agreement, signed by both parties, which indicates the amount of rent to be paid for the rental unit. The landlord's counsel referred to this agreement provided by both parties in evidence indicating $1,000.00 to be paid for June 2018 in the amount of $1,000.00, and then $1,600.00 from July 2018 going forward.

The landlord explained that the original verbal agreement was for the tenants to do renovations on the rental unit as payment for rent and submit receipts for the landlord to write off in order to assist with expenses for the rental unit. The landlord stated that in April 2018 she let the tenants know that the terms of the tenancy agreement would be changing and that they would be expecting monthly rent to be paid. The landlord testified that the tenants verbally agreed to pay $1,600.00 for the monthly rent but that they had concerns about paying $1,600.00 for June 2018 as they were not prepared for it. The landlord submitted that they agreed to a lesser amount of rent for June 2018 which was agreed to in writing.

Tenants' counsel submitted that previous discussions between the landlord and the tenant were for a monthly rent that was between $900.00 and $1,100.00. The tenants' counsel stated that the tenants had expressed concerns to the landlord about being able to afford $1,600.00 for the monthly rent but that Landlord N.D. used harsh language with the tenants and told them to either pay what they were requesting in rent or get out of the rental unit. Tenants' counsel submitted that the tenants were fearful of being evicted and losing their home and so they signed the agreement in duress.

The tenant testified that they paid $1,600.00 for July 2018 and August 2018 but only $1,100.00 in rent for September 2018 and October 2018 as this was the upper limit of what was verbally agreed to with the landlord before signing the agreement.

The tenant stated that there was a tenancy agreement given to the tenants by the landlord, when the tenants first moved into the rental unit in August 2017, which indicated rent in the amount of $1,000.00. The tenant confirmed that the tenants had not signed the agreement and never did pay $1,000.00 a month in rent. Counsel indicated that they were only referring to this agreement to support the amount of rent that the tenants were willing to pay.

The landlord confirmed that the tenants had paid $1,100.00 in rent for September 2018 and October 2018 as stated but they maintained it is not the full rent that is expected. The landlord disputed writing an amount for the rent in the agreement but submitted that the tenancy agreement was only provided to the tenants at their request for the purpose of getting a mailbox, and that it was only for that purpose. The landlord stated that the parties were very amicable with each other at the time that the agreement for rent was signed and the Landlord N.D. denied using any harsh language with the tenants regarding the amount of rent expected.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Having reviewed the evidence and testimony, I find that the tenants have not provided any documentary evidence to prove that they have actually incurred a loss for expenses associated with the hiring of an engineer. Even if the tenants had provided evidence of this loss, I find that the tenants have not demonstrated how this expense would be due to the actions or neglect of the landlord in violation of the Act, regulations or tenancy agreement. For the above reasons the tenants' claim for $1,000.00 is dismissed, without leave to reapply.

Section 14 of the *Act* states that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Having reviewed the evidence and testimony, I find that it is undisputed that there was only a verbal agreement for renovations as payment for rent prior to the written agreement that was signed by the parties on May 26, 2018. I find that there was no rent increase, only a change in terms that was agreed to in writing between the parties.

I find that there is no evidence that that the tenants were under duress when they signed the agreement as there is no correspondence referring to events that the tenants state had occurred or any other documentary evidence to support the tenant's statements. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Although the tenants may have felt pressured to sign the agreement, I find that there is no evidence that they were forced to sign the agreement for any reason other than the prospect of having to move out of the rental unit, if they could not agree to terms, as they did not want to move out of the rental unit.

I further find that the tenants paid the agreed upon amount of $1,600.00 for two months and there is no evidence that they attempted to correspond with the landlord regarding the amount of rent being paid to mitigate the losses for either party. I find that the tenants arbitrarily determined that $1,100.00 was a more appropriate amount of rent and changed the terms of the agreement that were previously agreed to in writing, without obtaining written agreement from the landlord.

For the above reasons, I find that the tenants agreed in writing to pay $1,600.00 for the monthly rent effective as of July 2018 in accordance with section 14 of the *Act*. Therefore, the tenants' Application to dispute an additional rent increase, and for compensation in the amount of $1,000.00 for recovery of rent paid for July 2018 and August 2018, is dismissed without leave to reapply.

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As I have found the 10 Day Notice was duly served to the tenant on September 06, 2018, I find the tenant had until September 11, 2018, to dispute the 10 Day Notice or to pay the full amount of the arrears.

I find that the tenant submitted their initial Application on September 10, 2018, within the five day time limit permitted under section 46 (4) the Act; however, I find the tenant did not provide any evidence that they paid the monthly rent within the five days allowed by the *Act* or were legally entitled to withhold any rent.

For the above reasons, the tenant's Application to cancel the 10 Day Notice is dismissed, without leave to reapply

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Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the *Act*. I find that the 10 Day Notice complies with section 52 of the *Act*. For these reasons, I grant a two day Order of Possession to the landlord.

As the tenants were not successful in their Application their request to recover the filing fee is dismissed, without leave to reapply.

Conclusion

The tenants' Application is dismissed in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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: October 26, 2018

Residential Tenancy Branch