



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes CNR ERP LAT LRE MNRT MT OLC RR OPRM-DR

Introduction

The matter originally proceeded by way of a hearing on December 4, 2018 to deal with cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

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

The tenant requested:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- 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 to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- a monetary order for compensation for emergency repairs, money owed or losses under the *Act*, regulation or tenancy agreement pursuant to section 67.

On December 24, 2018, the tenant was granted their application for review consideration, and the Decision and Orders dated December 4, 2018 were suspended until the Review Hearing scheduled for February 7, 2019. The tenant filed the

application for review consideration on the grounds that he did not attend the original scheduled hearing as he was hospitalized since November 26, 2018, and therefore the tenant was unable to attend the scheduled hearing due to reasons beyond his control.

Both parties attended this Review Hearing, and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The application for review consideration decision dated December 24, 2018 noted the requirements for service of documents for this hearing. The landlord acknowledged receipt of all hearing documents, and was ready to proceed with this matter. The tenant also acknowledged receipt of the landlord's documentary materials for this hearing, and was ready to proceed.

Although the landlord applied for a monetary Order of \$1,100.00 in their initial claim, since they applied another \$2,200.00 in rent has become owing that was not included in their original application. I have accepted the landlord's request to amend their original application from \$1,100.00 to \$3,300.00 to reflect this additional unpaid rent that became owing by the time this review hearing was convened.

Issue(s) to be Decided

Should the Decision and Orders granted on December 4, 2018 be confirmed?

Background and Evidence

This fixed term tenancy began on September 15, 2018 with monthly rent set at \$1,100.00, payable on the 15th day of the month. The landlord collected a security deposit in the amount of \$600.00, which he still holds. The tenant continues to reside at the residence.

The landlord served the tenant with a 10 Day Notice on October 17, 2018 as the tenant failed to pay rent for October 2018. The tenant does not dispute the fact that he has not paid all the outstanding rent for this tenancy. The landlord testified that the tenant still owes rent for October and December 2018, and January 2019. The landlord indicated that the tenant did make a payment on December 10, 2018 for use and occupancy only.

The tenant also made an application for a rent reduction in the amount of \$500.00. The tenant testified that the separation between the two rental units is not secured, and lacked soundproofing. The tenant is also requesting an order restricting the landlord's access as the landlord attends his unit unannounced and accesses the upstairs unit

through his. The landlord disputes this stating that he has only done this once, and with the tenants permission as he forgot his keys. The tenant also states that he was not given access to a laundry facility, which the landlord states is not included in the tenancy agreement. The landlord disputes the tenant's claims that his unit is not secured.

The tenant also requested that the landlord secure the garage and storage area. The tenant is also requesting the locks be changed for the main entrance for security reasons. The landlord testified that the garage was not included in the tenancy agreement, and therefore he is not required to secure the garage for the tenant.

The tenant also applied for a monetary order in the amount of \$400.00. The tenant is requesting \$75.00 for labour and \$56.00 for installation of cabinets that the landlord agreed to. The landlord does not dispute that he agreed to this work, but testified that he had aid the tenant the money for the work. The landlord provided a receipt for \$56.00 for the cabinets. The tenant testified that the labour should be \$75.00 per hour, and not a onetime payment of \$75.00. There is not official written contract or agreement for the work. The tenant is also requesting compensation for door locks that he had installed.

Analysis

I have considered the sworn testimony of both parties in today's review hearing.

I find that it was undisputed that the tenant owes the landlord outstanding rent in the amount of \$3,300.00. I find that the tenant was obligated to pay the monthly rent in the amount of \$1100.00 as per the tenancy agreement and section 26 of the *Act*.

I find that that the tenant was served, in accordance with sections 88 and 90 of the *Act*, with the 10 Day Notice on October 20, three days after posting. I find the 10 Day Notice dated October 17, 2018 to be valid. I accept the evidence before me that the tenant failed to pay the rent owed in full within the five days granted under section 46 (4) of the *Act*.

I, therefore, confirm the decision and orders issued on December 4, 2018. Although the landlord applied for a Monetary Order of \$1,100.00 in their initial claim, since they applied another \$2,200.00 in rent has become owing that was not included in their original application. As I have accepted the landlord's request to amend their original application to reflect this additional unpaid rent that became owing by the time this hearing was convened. I issue an amended Monetary Order to reflect the new monetary

amount of \$3,300.00. As previously requested by the landlord, the security deposit will remain in the possession of the landlord until dealt with at the end of the tenancy.

As this tenancy has come to an end, the tenant's nonmonetary portions of his application related to this tenancy are dismissed without leave to reapply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities, that that he suffered a loss due to the landlord's direction violation of the tenancy agreement.

The tenant testified that he had performed work for the landlord, which the landlord claims he had compensated the tenant for. I find that the tenant has not provided sufficient evidence to support that the landlord has failed to compensate him. I find that the landlord provided contradictory evidence in the form of a receipt to show that the cabinet was paid for. As the onus falls on the claimant to support their claim, I am not satisfied that the tenant has satisfied that onus. On this basis I dismiss the tenant's application for compensation without leave to reapply.

The tenant seeks a rent reduction for the landlord's failure to change the locks.

Section 25 of the *Act* states the obligations of the landlord for new tenants.

Rekeying locks for new tenants

25 (1) At the request of a tenant at the start of a new tenancy, the landlord must

- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
- (b) pay all costs associated with the changes under paragraph (a).

(2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

I am not satisfied that the landlord has failed to comply with section 25 of the *Act* as stated above. Accordingly, I dismiss this portion of the tenant's application without leave to reapply.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

The decision and orders issued on December 4, 2018 are confirmed.

I issue an amended Monetary Order to reflect the new monetary amount of \$3,300.00. 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.

The Order of Possession is effective two **days after service of this Order** on the tenant. Should the tenant 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: February 11, 2019

Residential Tenancy Branch