



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, OLC, ERP, LRE, 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;
- 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 emergency 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 regarding a disputed additional rent increase pursuant to section 43; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants' original application was filed with the Residential Tenancy Branch (the RTB) on January 8, 2019. The tenants' amendment to that application, adding the request to cancel the 1 Month Notice, was filed with the RTB on February 4, 2019.

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. As the landlord's assistant noted that the tenants had misspelled the landlord's name in their application, the tenants agreed to change the spelling of the landlord's name in their application to reflect the spelling identified above. This change was made with the agreement of both parties.

As the tenants confirmed that they were handed the 1 Month Notice by the landlord on February 1, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. The landlord's assistant confirmed that on January 16, 2019, the landlord received part of the tenants' original dispute resolution hearing package sent by registered mail. Although the landlord knew the time, date and call-in instructions for this hearing, and had

received all but pages 3 and 4 of the hearing package, the landlord's assistant said that they had to call in to the RTB to obtain more information about the process for submitting written evidence. They testified that they still did not know the full particulars of the tenants' original claim. The landlord's assistant confirmed that the landlord received a copy of the amendment to the tenants' application for dispute resolution on February 4, 2019, as declared by Tenant SV (the tenant). Both tenants in attendance testified that they sent the landlord a full copy of their original dispute resolution hearing package. Under these circumstances, and as the landlord did receive sufficient information from the RTB to enable them to submit written evidence in sufficient time to have their evidence considered, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*, and in the event that not all of the hearing package was provided to the landlord that the landlord was nevertheless sufficiently served with these documents in accordance with paragraph 71(2)(c) of the *Act*. Since both parties confirmed that they had received one another's written and photographic evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any orders be issued with respect to the monthly rent established for this tenancy? Should any orders be issued with respect to the landlord's access to the rental unit? Should any emergency repairs be ordered? Should any other orders be issued with respect to this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy commenced on May 2, 2013. According to the terms of the tenancy agreement signed by the landlord and the tenant on May 2, 2013, the initial monthly rent was set at \$1,500.00, payable in advance on the first of each month. The tenant was to be responsible for payments for hydro, gas and water, in addition to the monthly rent. The landlord continues to hold the \$750.00 security deposit and \$750.00 pet damage deposit paid on May 2, 2013.

As of September 1, 2017, the tenant(s) began paying \$1,700.00 in monthly rent. The landlord maintained that the tenants gave their oral agreement to this rental increase. The tenants provided written evidence and sworn testimony that they were forced to pay this rent increase as the landlord told them that they would evict the tenants within ten days if they did not agree to this additional rent payment. At the hearing and in their written evidence, the landlord denied having forced the tenants to pay this additional rent. The landlord and the landlord's assistant confirmed that no written Notice of Rent Increase on the prescribed RTB form was provided to the tenant prior to the September 2017 increase in the monthly rent for these premises. In their application, the tenants maintained that this was an illegal rent increase, which exceeded the rent increase amounts allowed under the *Act* and that the landlord issued no Notice of Rent

Increase as required by the *Act* to obtain any rent increase that the landlord began charging in September 2017. The tenant also testified that the landlord had steadfastly refused to provide them with a copy of the signed residential tenancy agreement until shortly before this hearing and that the landlord had refused to issue rent receipts for their payments. The tenant testified that the landlord had altered the wording of the original tenancy agreement to add the requirement that the tenant pay for water, which the landlord had been charging at a rate of \$100.00 per month since the beginning of this tenancy.

The tenants entered into written evidence a copy of the 1 Month Notice, requiring the this tenancy to end by March 1, 2019. As I noted at the hearing, the tenant was correct in asserting that the effective date of the landlord's 1 Month Notice was incorrect. I advised the parties that the earliest date that this tenancy could end for a 1 Month Notice issued on February 1, 2019, was March 31, 2019. The landlord's 1 Month Notice cited the following reasons for the issuance of the Notice:

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

Tenant has not done required repairs of damage to the unit/site.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

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 the tenants' application and the landlord's 1 Month Notice:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on April 30, 2019, by which time the tenant(s) and all occupants will have surrendered vacant possession of the rental unit to the landlord.
2. Both parties agreed that the legal monthly rent for this tenancy is \$1,500.00, the amount stated on their original residential tenancy agreement.
3. The landlord agreed to provide the tenants a credit of \$2,400.00 towards their future monthly rent. Both parties agreed that this credit is to be applied to monthly rent that becomes owing on March 1, 2019 and April 1, 2019.
4. Both parties agreed that the only monthly rent that will become owing for this tenancy before it ends on April 30, 2019, will be a \$600.00 payment that becomes due on April 1,

2019, and which the tenants agreed to provide to the landlord by way of a bank money order to be sent to the landlord by registered mail.

5. The tenants agreed to allow the landlord's representative(s) to conduct monthly inspections for the remaining months of this tenancy (i.e., March and April 2019) to be arranged after the landlord provided 24 hours written notice to the tenants, but which will exclude the Landlord MC from any such inspections.
6. The tenants agreed that they will allow these inspections to occur without any abuse of any kind being directed at the landlord's representatives by the tenants or anyone allowed on the premises by the tenants.
7. The tenants agreed that they will provide the landlord with their forwarding address in writing at the end of this tenancy.
8. 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 the landlord's 1 Month Notice and that they did so of their own free will and without any element of force or coercion having been applied.

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 if the tenants do not vacate the rental premises in accordance with their agreement by 1:00 p.m. on April 30, 2019. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with an Order in the event that the tenant(s) or any occupant on the premises do not vacate the premises by the time and date set out in their agreement. Should the tenant(s) 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 order that the monthly rent for this tenancy is set at \$1,500.00, and that the tenants remain responsible for the utilities that they have been responsible for during the course of this tenancy.

In order to give effect to the above settlement, I order that the only monthly rent remaining to be paid for this tenancy until it ends on April 30, 2019, is a \$600.00 payment to be made to the landlord by bank money order by April 1, 2019. I order the tenants to send this bank money order to the landlord by registered mail by at least March 26, 2019.

I further order the landlords to provide 24 hours written notice to the tenants of up to two monthly inspections to be conducted by the landlord's representatives, but which will exclude the landlord, for the months of March and April 2019. I note that these inspections are in addition to the joint move-out condition inspection to be performed at the end of this tenancy.

I order the tenants to comply with their commitment to refrain from making any abusive comments or displaying abusive behaviours during the course of the two remaining monthly inspections of the rental premises.

I order the tenants to provide their forwarding address in writing to the landlords at the end of this tenancy if they are interested in receiving a return of their deposits.

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 21, 2019

Residential Tenancy Branch