



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the Tenants: CNQ FFT MT
For the Landlord: OPU MNRL-S FFL

Introduction

This decision deals with applications for dispute resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The tenants’ application for dispute resolution was made on March 30, 2019 (the “tenants’ application”). The tenants had sought the following relief pursuant to the Act:

1. more time file a dispute against a notice to end tenancy;
2. an order cancelling a 2 Month Notice to End Tenancy; and,
3. compensation for the filing fee.

The landlord’s application for dispute resolution was made on April 10, 2019 (the “landlord’s application”). The landlord applied for the following relief, pursuant to the Act:

1. an order of possession for unpaid utilities;
2. compensation for unpaid rent and unpaid utilities; and,
3. compensation for the filing fee.

I note that the tenant (M.G.) is the sole tenant named on his application, while the landlord’s application only lists the tenant’s wife (R.A.) as the sole tenant. The tenant confirmed that he and the co-tenant are husband and wife, and that they are both tenants. As such, I have amended the applications and added both tenants’ names to the style of cause of this dispute, as reflected on the cover page of this decision.

The tenant (M.G.), the landlord, and the landlord’s agent (and interpreter) attended the hearing, were given a full opportunity to be heard, to present testimony, to make

submissions, and to call witnesses. The parties did not raise any issues with respect to the service of evidence.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of these applications are considered in my decision.

Preliminary Issue: Tenancy Has Ended

The parties confirmed that the tenants vacated the rental unit on or about the end of April 2019. As such, the tenants' application for more time to file a dispute against a notice to end tenancy and an order cancelling a notice to end tenancy is now moot. Likewise, the landlord's application for an order of possession is also moot.

Given the above, I dismiss those aspects of the parties' applications without leave to reapply and will only address the issue of whether the landlord is entitled to compensation for unpaid rent and utilities, and for the filing fee.

While the parties provided extensive testimony regarding both a 10 Day Notice to End Tenancy for Unpaid Rent and a One Month Notice to End Tenancy for Landlord's Use of Property, I will only reproduce relevant testimony as it relates to the landlord's remaining claim.

Issues

1. Is the landlord entitled to compensation for unpaid rent and utilities?
2. Is either party entitled to recovery of the filing fee?

Background and Evidence

The landlord (through her agent) testified that the tenancy began on November 1, 2013. Monthly rent was \$1,300.00, due on the first of the month, and the tenants were also responsible for 50% of the utilities. There is no written tenancy agreement. The tenant agreed with this testimony of the landlord.

In January 2016, the rent increased to \$1,400.00; utilities remained at 50%. In September 2017 the rent increased to \$1,700.00, and utilities increased to 60%. On January 31, 2019 the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice"). The 2 Month Notice was served in-

person on the tenant's wife, the co-tenant. The tenants did not dispute the 2 Month Notice.

However, the tenants had not moved out of the rental unit on March 31, 2019, and so the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on April 2, 2019, for \$1,700.00 in unpaid rent and \$332.26 in unpaid utilities. The landlord's agent stated that the landlord seeks \$3,948.57 for unpaid rent and utilities. A monetary worksheet was submitted into evidence. The claim includes rent for May 2019 in addition to the previously mentioned amounts.

The landlord testified that the tenants moved out on May 2, 2019. The tenant testified that they moved out on April 30, 2019.

The tenant testified that the landlord's testimony consisted entirely of fabrications. He spoke repeatedly about how the landlord purposely served the above-noted notices on his wife when he was out of the country, knowing full-well that he was the person who took care of rent, etc.

The tenant spoke about illegal rent increases, and that he paid the rent anyway because he had no choice. He also testified that he in fact paid a \$800.00 security deposit at the start of the tenancy.

As for any compensation owed by the tenants to the landlord, the tenant testified that if there is anything he owes it might be the utility bill. He stated, however, that he "doesn't owe anything."

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. I must emphasize this last point: the landlord bears the burden in a dispute to prove their case.

In this case, the landlord claims that the tenants owe somewhere between \$2,032.26 and \$3,948.57.

For the purposes of my analysis the tenancy ended on March 31, 2019, as per the 2 Month Notice. That the tenants remained in the rental unit beyond March 31 did not

reactivate or extend the tenancy. The situation that was created here is that of an overholding tenant.

Section 57(1) of the Act defines an “overholding tenants” to mean a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. Section 57(3) of the Act further states that a “landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.”

Here, the landlord claims compensation for rent for April 2019. The tenant argued that, as stated in a written submission, “As far as the rent for this month [i.e., April 2019] goes, I withheld giving her the rent because I know of her attitude towards paying and I was more than sure that she wouldn't reimburse me if I had given her the rent.”

I note that the landlord claimed an amount much higher than that noted on the 10 Day Notice, which implies that the landlord did not provide the tenants with one-month compensation as is required under section 51(1) of the Act. I conclude that the tenants did not owe rent for April 2019 as the landlord ought to have compensated them the equivalent to one month's rent as per the Act. Finally, as there is conflicting testimony regarding the date that the tenants vacated the rental unit (it was either April 30 or May 2), and insufficient evidence that the tenants left on May 2, I make no finding that the tenants owe rent for any portion of May 2019.

Insofar as the rent itself is concerned, in January 2016 the landlord increased the rent from \$1,300.00 to \$1,400.00, which is above the legally permitted increase of 2.9% for that year. In September 2017 the landlord increased the rent (now illegally set at \$1,400.00, instead of \$1,337.70) to \$1,700.00, which represents a huge—and illegal—increase of 21%. The legally permitted rent increase for 2017 was 3.7%. It should be noted that a landlord cannot impose a cumulative rent increase in cases where the rent was not increased in one year.

In respect of the unpaid utilities, however, the landlord submitted documentary evidence to establish that the tenants owed \$332.26 in unpaid utilities. The tenant testified that he owes the landlord nothing, but he produced no receipts or other evidence to prove that he paid the utilities as claimed.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the

landlord has not met the onus of proving her claim for compensation for unpaid rent, but that she has met the onus of proving her claim for unpaid utilities.

As such, I grant the landlord a monetary award of \$332.26 against the tenants for unpaid utilities.

The landlord testified that the tenants paid no security or pet damage deposit. The tenant disputed this and testified that he paid a security deposit of \$800.00.

While there is no documentary evidence regarding this issue, such as a written tenancy agreement or a receipt for the security deposit, I am inclined to accept the tenant's testimony over that of the landlord on this point. First, he references the security deposit at several points in his written submission. Second, the landlord's application specifically states that she seeks "to recover the money for the unpaid rent - holding security or pet deposit", which implies that she is aware of a security deposit. Third, the landlord's negligence in choosing not to have a written tenancy agreement (which would have indicated what the security deposit amount is), and fourth, the landlord's illegal rent increases, all cast sufficient doubt on the landlord's assertions that the tenant did not pay a security deposit. I thus conclude that the tenants paid a security deposit of \$800.00.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee.

As the landlord is only partially successful in her application, and, given the landlord's illegal rent increases for which she attempted to claim, I do not grant the landlord compensation for the filing fee. As the tenants' application was rendered moot by their vacating of the rental unit prior to this hearing, I likewise do not grant the tenants compensation for the filing fee.

For the reasons given, the landlord may retain \$332.26 of the tenants' security deposit in full satisfaction of the award for unpaid utilities. I order that the landlord return the balance of \$467.74 of the tenants' security deposit to the tenants. A monetary order is issued to the tenants in conjunction with this decision.

Conclusion

I order that the landlord may retain \$332.26 of the tenants' security deposit for unpaid utilities. The remainder of her claims are dismissed without leave to reapply.

I grant the tenants a monetary order in the amount of \$467.74, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial 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 Act.

Dated: May 16, 2019

Residential Tenancy Branch