



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: CNC, DRI, FFT
LAT, LRR, MNDCT, OLC, FFT

Introduction

The Tenant has made two applications. In one Application for Dispute Resolution filed on July 31, 2019 she seeks the following:

- a. An order to cancel a one month Notice to End Tenancy dated July 24, 2019 and setting the end of tenancy for August 31, 2019.
- b. An order disputing a rent increase.
- c. An order to recover the cost of the filing fee.

The other Application for Dispute Resolution which was filed by the Tenant on July 12, 2019 seeks the following:

- a. An order that the authorizing the Tenant to change the locks
- b. An order suspending or setting conditions on the landlord's right to enter the rental unit.
- c. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- d. A monetary order in the sum of \$5000.
- e. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on July 24, 2009.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant on July 12, 2019 was personally served on the landlord on July 12, 2009. I find that the Application for Dispute Resolution filed by the Tenant on July 31, 2019 was served on the landlord by mailing, by registered mail to where the landlord resides in early August 2019.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the Tenant is entitled to an order cancelling the one month Notice to End Tenancy dated July 24, 2019?
- b. Whether the tenant is entitled to an order disputing an additional rent increase?
- c. Whether the tenant is entitled to recover the cost of the filing fee in the application filed on July 31, 2019?
- d. Whether the tenant is entitled to An order that the authorizing the Tenant to change the locks?
- e. Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?
- f. Whether the tenant is entitled to a monetary order and if so how much?
- g. Whether the tenant is entitled to an order that the landlord comply with the Act, Regulations and/or tenancy agreement?
- h. Whether the tenant is entitled to an order to recover the cost of the filing fee in the Application for Dispute Resolution that was filed on July 12, 2019?.

Background and Evidence:

The parties entered into an order tenancy agreement that provided that the tenancy would start on August 1, 2016 and continue on a month to month basis. The rent at that time was \$600 per month. The tenant did not pay a security deposit. The first two month rent of \$600 per month was waived by the landlord. On September 1, 2017 the rent was increased to \$650 per month payable in advance on the first day of each month. The landlord failed to serve a Notice of Rent Increase in the approved government form and the \$50 rent increase is not valid and is recoverable by the Tenant.

Tenant's Application to Cancel the One month Notice to End Tenancy:

The tenant has failed to pay the rent on the due date on more than three occasions including three times in the last 6 months. .

The parties reach a partial settlement. The tenant testified that she found another rental unit that will be available to move into around the first week of October. The parties mutually agreed to end the tenancy and that I should issue an Order of Possession effective October 15, 2019.

I order that the application of the Tenant to cancel the one month Notice to End Tenancy be dismissed. The tenancy shall come to an end on October 15, 2019 as agreed by the parties.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective October 15, 2019. .

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Tenant's Application Disputing a rent increase that is not permitted by the law:

Section 41 to 43 of the Residential Tenancy Act provides that a landlord must not impose a rent increase except as calculated in accordance with the Regulations and must give the Tenant at least 3 months notice in the approved government form. Section 43(5) of the Act provides if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The landlord provided an accounting of non-payment of rent which the Tenant did not dispute. I made the following determinations:

- I determined the tenant was responsible to pay the rent in the sum of \$600 per month for October 2016, November 2016 and December 2016 for a total of

\$1800. The tenant paid \$800 of that rent leaving a balance owing of \$1000 for 2016.

- The landlord charged the Tenant \$7400 in rent for 2017. The tenant paid \$7050. However, the landlord increased the by \$50 to \$650 per month commencing September 1, 2017. The landlord failed to serve a Notice of Rent Increase in the approved government form. Thus the landlord charged the tenant \$200 in rent additional rent (from September 2017 to December 2017) which is not permitted by the Act. After deducting the amount of the illegal rent increase I determined the tenant owes \$150 for 2017.
- The rent charged by the landlord for 2018 was \$650 per month. This amounts to \$600 more than permitted by the Act because of the illegal rent increase. However, the rent that was due for the 12 months in 2018 based on the original \$600 per month was \$7200. The tenant paid \$6330 for rent in 2018. Thus I determined the unpaid rent for 2018 based on the original rent of \$600 per month was \$870.
- The rent charged by the landlord for the period January 1, 2019 to September 1, 2019 was \$650. This amounts to \$450 more than permitted ($\$50 \times 9 \text{ months} = \450). The landlord was entitled to charge \$5400 for that period based on a rent of \$600 per month. The tenant paid rent of \$650 per month totalling \$5850. The tenant thus overpaid by \$450.
- I determined that there are arrears of rent of \$2020 ($\$1000 + \$150 + \$870 = \2020). However, the tenant is entitled to apply the overpayment she made in 2019 of \$450 thus reducing this sum to tenant owes outstanding rent in the sum of \$1570.
- The landlord is entitled to recover use and occupation rent of \$300 for the period October 1, 2019 to October 15, 2019. I determined the tenant owes rent in the sum of \$1870 to October 15, 2019.

Tenant's Application Filed July 12, 2019

I dismissed the following claims as they are moot and the tenancy is coming to an end:

- An order that the authorizing the Tenant to change the locks
- An order suspending or setting conditions on the landlord's right to enter the rental unit.
- An order that the landlord comply with the Act, Regulations and/or tenancy agreement.

Tenant's Application for a Monetary Order in the sum of \$5000

Section 28 of the Residential Tenancy Act provides as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant seeks compensation of \$5000 alleging the Caretaker employed by the landlord has illegal entered her rental unit on multiple occasions and has breached her right of quiet enjoyment leading to the need to call the police on two occasions at the end of June.

The tenant gave the following evidence:

- The Caretaker lives in the rental unit in the lower portion. She lives in the upper portion.
- She testified the Caretaker has entered her suite on multiple occasions without giving proper notice including the following:
 - On January 6, 2017 he went into her suite to gain access to the attic
 - On May 25, 2017 he entered the rental unit
 - On October 2, 2017 the door handle was broken
 - On September 23, 2018 her made repairs

- The tenant complained to the landlord and later that evening he again entered the suite without permission.
 - On October 5, 2018 she returned home to see the lights were left on.
- She testified she contacted the landlord on multiple occasions but the unauthorized entries by the Caretaker and a repair main continued. She asked the landlord to take away the keys from the Caretaker. The landlord ignored her requests. .
- The tenant testified that she seeks compensation because her right to quiet enjoyment being affected during my tenancy. She does not feel safe in her home as a result of the lack of action taken by Landlord. The Caretaker was charged.
- In June 2019 there was a physical assault including threats and verbal abuse by Caretaker. She seeks a rent reduction for remainder of tenancy while I look for a new home. Moving costs.

The landlord testified as follows:

- The difficulties between the Caretaker and the Tenant were intermittent. There was long period of times when they got along.
- The dispute which occurred in June involved a verbal altercation between the Tenant and a male friend and the Caretaker. Both sides were equally responsible for the situation getting out of hand. The charges against the Caretaker have been dropped.
- The landlord submitted the incidents dating back to 2017 do not relate to the events of June 2019.

Analysis:

After carefully considering all of the evidence I made the following determinations:

- The Caretaker was acting as an agent on behalf of the landlord. The landlord is responsible for wrongs done by the Caretaker during the course of his employment.
- I determined the Caretaker entered the tenant's rental unit on multiple occasions. The actions of the Caretaker show that he fails to understand the obligations of the landlord under section 29 (pasted at the bottom of this decision as a courtesy to the parties) to give proper notice before entry. The fact that the Caretaker was attempting to do repair work which would benefit both the landlord and Tenant does not justify the improper entry.

- I determined the landlord failed to take adequate actions to remedy the situation.
- In the circumstances I determined the Tenant is entitled to compensation in the sum of \$800 for the unlawful entry.
- The tenant seeks compensation for the breach of the quiet enjoyment caused by the Caretaker in the form of harassment, verbal threats which eventually lead to an altercation leading the calling of the police. The Caretaker did not testify at the hearing. However, I have considered all of the evidence including the testimony the tenant and her male friend were at least partially responsible for this altercation.
- I do not accept the submission of the tenant that the landlord is responsible for the cost of her move. The landlord had a legal right to end the tenancy because of non payment and repeated late payment of rent. The tenancy came to an end for this portion.
- In the circumstances and in the absence of evidence from the Caretaker I determined the tenant is entitled to compensation in the sum of \$500 for breach of the covenant of quiet enjoyment caused by the ongoing dispute leading to threats and verbal abuse of the Caretaker.

In summary I determined the tenant has established a claim in the sum of \$1300 plus \$100 for the cost of the filing fee for a total of \$1400. I determined the Tenant was entitled to recover half of the cost of the filing fee or the sum of \$50 in the application filed in late July as the Tenant was only partially successful. Thus the tenant has established a claim of \$1450.

.Section 72(2)(a) provides as follows:

Director's orders: fees and monetary orders

72 (2)If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

The tenant has established a monetary claim against the landlord in the sum of \$1450. However, I determined the tenant owes the landlord rent in the sum of \$1870. I ordered

that the tenant's claim be applied to the outstanding rent leaving a balance of rent owing of \$420.

Conclusion:

I granted an Order of Possession effective October 15, 2019 by agreement between the parties. I ordered the tenant had established a claim against the landlord in the sum of \$1450 sum was to be applied against outstanding rent leaving a balance owing of \$420. All other claims are dismissed.

The landlord has not made an application so no monetary order in favour of the landlord has been made.

This decision is final and binding on the parties.

As a courtesy to the parties I have pasted section 29 which set out the restrictions on the landlord's right to enter.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;

- (e) the tenant has abandoned the rental unit;
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

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: September 13, 2019

Residential Tenancy Branch