



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOONLIGHT PROPERTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNRL-S OPL OPR
 CNL CNR FFT LRE OLC

Introduction

This hearing was convened by way of conference call concerning applications made by the tenants and by the landlord, which have been joined to be heard together.

The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; an Order of Possession for landlord's use of property; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The tenants have applied as against the landlord and a landlord company seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order cancelling a notice to end the tenancy for landlord's use of property; an order limiting or setting conditions on the landlord's right to enter the rental unit; an order that the landlords comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords.

The landlord and both tenants attended the hearing, and the landlord was accompanied by an Interpreter. The landlord and one of the tenants gave affirmed testimony, and the landlord's Interpreter was affirmed to well and truly interpret the hearing from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of the Interpreter's skill and ability. The parties were given the opportunity to question each other and to give submissions.

No issues with respect to the exchange of evidence were raised and all evidence provided by the parties has been reviewed and is considered in this Decision.

The Rules of Procedure specify that multiple applications in a single Application for Dispute Resolution must be related. In this case, the tenants have applied for an order

limiting or setting conditions on the landlord's right to enter the rental unit; for an order that the landlord comply with the *Act*, regulation or tenancy agreement, both of which are not related to the primary applications which deal with notices to end the tenancy, and I advised the parties that those matters will not be dealt with in this hearing.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act* and in good faith, or should it be cancelled?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on November 1, 2017 and expired on October 31, 2018, and the tenants still reside in the rental unit. A copy of the tenancy agreement has been provided as evidence for this hearing which specifies rent in the amount of \$3,000.00 per month for November and December, and \$3,500.00 per month for January to the end of the tenancy payable on the 1st day of each month. Two extra bedrooms were added to the tenancy. It also specifies that the tenants pay 2/3 of utilities. The rental unit is the upper level of a house, plus the 2 bedrooms on the lower level. Another tenant is also renting part of the lower level.

The landlord further testified that on August 20, 2019 the landlord's friend served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property by registered mail and by posting a copy to the door of the rental unit. A copy has been provided for this hearing and it is dated August 18, 2019 and contains an effective date of vacancy of November 1, 2019. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The landlord testified that the

house she currently resides in is listed for sale and the landlord will be occupying the rental home.

The landlord also testified that the tenants didn't pay any rent for the months of September, October or November, 2019. The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 12, 2019 by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated September 12, 2019 and contains an effective date of vacancy of September 30, 2019 for unpaid rent in the amount of \$3,500.00 that was due on September 1, 2019. However, the landlord got that amount from the tenancy agreement forgetting that rent had been increased commencing January 1, 2019 to \$3,587.50. The landlord has not provided a copy of a Notice of Rent Increase.

The landlord testified that her claim includes \$214.00 for unpaid utilities, being 60% of a \$183.44 hydro bill, or \$110.06 and another utility bill of \$81.81 for which the landlord claims \$49.00. The landlord's description of the claim on file states: "The tenant also didn't pay the BC Hydro bill that is 60% of \$276 = 165. The Fortis BC bill that is 60% of \$81.81 = \$49." A copy of 1 hydro bill, dated August 26, 2019 in the amount of \$276.92 due by September 17, 2019 has been provided as evidence.

The landlord also testified that the tenants used a portion of the rental unit as an Air BNB unit without the landlord's consent. The landlord received a letter from the City confirming that the tenants had done so.

The landlord has also provided a Monetary Order Worksheet setting out the claim for unpaid rent in the amount of \$10,762.00 and \$214.00 for unpaid utilities.

The tenant testified that rent wasn't paid for September because the tenants had been served with the Two Month Notice to End Tenancy for Landlord's Use of Property, and the tenants intended September to be their free month of rent and they intended to move. Then the landlord used her agent to rent the other suite.

The tenants do not believe the landlord will be using the rental unit as her own home. The landlord listed her current home on March 6, 2019, which was the second listing because it hadn't sold after the first listing and it still has not sold. The landlord's agent leased the other suite but the landlord said she didn't ask the agent to lease it. The tenants do not believe the landlord. The Two Month Notice to End Tenancy for Landlord's Use of Property was not issued in good faith.

The landlord also cut the power to the rental home, so the tenants put the account in their name for the entire rental home, and the tenants have already paid the bills and the landlord is claiming those amounts.

The \$1,500.00 security deposit was paid when the tenancy agreement was signed, and the tenants paid another \$250.00 security deposit in January by e-transfer to the landlord's agent. The landlord's agent stopped working for the landlord and told the tenants that the landlord wants to rent the entire property to the tenants for \$3,500.00 and that the tenants could sub-let a portion. That permission was given verbally and in writing. The tenants did rent on Air BNB but then the City gave notice that the home is not zoned for that, so the tenants ceased renting it.

The tenant further testified that the landlord did not serve a Notice of Rent Increase, but the tenants were given notice of such an increase on November 2, 2018 by text message, effective in January. Then, on November 26, 2018 the tenants received more demands from the landlord's agent that the increase of \$87.50 was also required for November and December. The tenants paid that as well, but no Notice of Rent Increase was served at all.

Analysis

The landlord served the Two Month Notice to End Tenancy for Landlord's Use of Property on August 20, 2019 by registered mail. In order to be successful in obtaining an Order of Possession for that notice, the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in that notice specifically that the landlord intends to reside in it. However, the consequences for not using the rental unit within a reasonable time after the tenants move out are quite onerous. The landlord has not sold her current home and if it doesn't sell within that reasonable time, the landlord could be required to compensate the tenants 12 times the monthly rent. I find it was premature to issue the Two Month Notice to End Tenancy for Landlord's Use of Property, and I dismiss the landlord's application for an Order of Possession for landlord's use of the property, and I cancel the Notice.

The *Residential Tenancy Act* states that a tenant must pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement. In this case, the tenants do not dispute that they withheld rent. I can understand why the tenants didn't pay rent in September, 2019, because the landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property, and the law requires the equivalent of 1 month's rent as compensation to a tenant. However, the tenants continued to live in the rental unit but

did not pay the rent. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and I find that it is in the approved form and contains information required by the *Act*. The tenants did not pay the rent, and I dismiss the tenants' application to cancel it, and I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

With respect to the landlord's monetary claim for unpaid rent, there is no question that no rent has been paid for September, October and November, 2019. Since the landlord served the Two Month Notice to End Tenancy for Landlord's Use of Property prior to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the landlord still had the obligation to provide compensation to the tenants equivalent to 1 month's rent. However, having cancelled the Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord's obligation in that regard is also cancelled. I find that the landlord is entitled to the monthly rent.

The tenant testified that no Notice of Rent Increase was ever given to the tenants, but the landlord increased rent by \$87.50 by way of text message on November 2, 2018 effective in January, 2019 and then demanded that the tenants pay that increase for November and December as well, which they did. That is contrary to the law. The landlord has not provided any such notice increasing rent and I accept the testimony of the tenant. I find that the overpayments for November, 2018 through August, 2019 should be deducted from the rent owed to the landlord ($\$87.50 \times 10 \text{ months} = \875.00). The landlord is entitled to the difference totalling \$9,887.28 ($\$3,587.50 \times 3 = \$10,762.50 - \$875.00 = \$9,887.50$).

With respect to the landlord's claim for unpaid utilities, I have reviewed all of the evidentiary material provided by the parties. The landlord has provided a copy of 1 hydro bill, but no others and I find that the evidence provided does not match testimony and I dismiss the landlord's claim for utilities.

The tenancy agreement provided by the landlord was signed by the tenants on October 9, 2017 and by the landlord on October 11, 2017. It also contains an "explanation" that the extra 2 bedrooms were occupied at the beginning of this tenancy, and became available to the tenants on January 1, 2018 for the increased amount. It also states that the tenants agreed to pay an additional \$250.00 security deposit due to that increase. A landlord may not collect more than one security deposit. The landlord testified that it was not paid, but that is disputed by the tenant who testified that it was paid to the landlord's property manager at the time and has also provided copies of e-transfers

from the tenants' financial institution. I find that the landlord currently holds a security deposit totalling \$1,750.00 in trust.

Since both parties have been partially successful, I decline to order that either party recover the filing fees.

Having found that the tenants are indebted to the landlord the sum of \$9,887.50 for unpaid rent, I order the landlord to keep the \$1,750.00 security deposit in partial satisfaction and I grant a monetary order in favour of the landlord for the difference in the amount of \$8,137.50.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property is hereby cancelled.

The tenants' application seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I hereby order the landlord to keep the \$1,750.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$8,137.50.

This order is final and binding and may be enforced.

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: November 27, 2019

Residential Tenancy Branch