



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT, FFT, CNL, RP, LRE, PSF, DRI

Introduction

This hearing was convened in response to cross applications.

The Tenants filed an Application for Dispute Resolution, in which the Tenants applied for

- for an Order allowing the Tenants to change the locks;
- for an Order setting conditions on the Landlords' right to enter the rental unit;
- to cancel a Notice to End Tenancy for Landlord's Use of Property;
- to dispute a rent increase;
- for a monetary Order for money owed or compensation for damage or loss;
- for an Order requiring the Landlords to make repairs to the rental unit; and
- to recover the fee paid to file an Application for Dispute Resolution.

The Tenants filed an Amendment to their Application for Dispute Resolution, in which they added an application to cancel a Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the fee paid to file an Application for Dispute Resolution.

The female Agent for the Landlord stated that on November 15, 2019 the Landlord's Dispute Resolution Package was sent to the only Tenant named on the Landlord's Application for Dispute Resolution, via registered mail. The Tenant named on the Landlord's Application for Dispute Resolution (hereinafter referred to as the Tenant) acknowledged receipt of these documents.

The Tenant stated that on October 26, 2019 the Tenants' Dispute Resolution Package was sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

Both parties submitted a large amount of evidence to the Residential Tenancy Branch. The Agent for the Landlord acknowledged receipt of the Tenants' evidence and it was accepted as evidence for these proceedings. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application.

The parties have identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings. At these proceedings I will only consider the most urgent issues, which include the application to cancel the Notice to End Tenancy for Landlord's Use of Property; the application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities; and the application for an Order of Possession.

I will also consider the issue of whether there was an unlawful rent increase, as that is directly related to these issues.

I will also consider the applications to recover the filing fee, as the parties were required to pay those fees in order to commence these proceedings.

All other issues in dispute are dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy for Landlord's Use of Property and/or the Ten Day Notice to End Tenancy for Unpaid Rent be set aside?

Is the Landlord entitled to an Order of Possession?

Has there been an unlawful rent increase?

Do the Tenants owe rent?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on December 01, 2016;
- prior to the start of the tenancy the Landlord and the Tenant named on the Landlord's Application for Dispute Resolution signed a tenancy agreement;
- the signed tenancy agreement declared that rent of \$1,450.00 was due by the first day of each month;
- they verbally agreed that rent would be reduced to \$1,250.00, effective June 01, 2017, because the Tenant's mother moved out of the rental unit;
- a few weeks after the aforementioned verbal agreement, they verbally agreed that rent would be \$1,325.00, effective July 01, 2017;
- the Tenant paid \$1,325.00 in rent for the period between July 01, 2017 and September 30, 2019;
- on September 28, 2019 the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of

Property, which declared the Tenant must vacate the rental unit by November 30, 2019;

- the Tenant paid no rent for October of 2019;
- on October 31, 2019 the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which declared that the Tenant must vacate the unit by November 10, 2019;
- the Tenant paid \$475.00 in rent for November of 2019; and
- the Tenant paid \$1,250.00 in rent for December of 2019.

The Tenant stated that the agreement to pay \$1,325.00 in rent was contingent upon the Landlord making various repairs and improvements. The Landlord denies this submission.

The Tenant stated that he withheld rent for October of 2019 and a portion of the rent due for November of 2019 because he determined there had been an illegal rent increase on July 01, 2017. He stated that the amount he paid in rent for December of 2019 is the amount he believes he is legally required to pay.

The Landlord is seeking a monetary Order for unpaid rent from October of 2019, in the amount of \$1,325.00. The female Agent for the Landlord stated that the original claim for unpaid rent for October, in the amount of \$1,450.00, was made before she was aware the Landlord had verbally agreed to a rent reduction.

The female Agent for the Landlord stated that the Two Month Notice to End Tenancy was served to the Tenants because the Landlord's mother is moving to the country; the mother will be residing with the Landlord in the upper portion of the residential

complex; and the Landlord's wife wishes to use the lower portion of the residential complex for her sewing business.

The Tenant stated that he does not believe the Two Month Notice to End Tenancy was served in good faith. The Tenant gave several reasons to support his submission that the Notice was not served in good faith. Those reasons are not recorded here simply because I have determined that I do not need to consider the merits on the Two Month Notice to End Tenancy.

The female Agent for the Landlord stated that if the Landlord is successful, the Landlord would like an Order of Possession that is effective at the end of December of 2019.

Analysis

On the basis of the undisputed evidence, I find that there is a written tenancy agreement which requires the Tenant named on the Landlord's Application for Dispute Resolution to pay monthly rent of \$1,450.00 by the first day of each month. As the Tenant agreed, in writing, to pay rent of \$1,450.00, I find that the Landlord has the right to collect monthly rent of up to \$1,450.00.

On the basis of the undisputed evidence I find that the Landlord agreed that the Tenant only had to pay rent of \$1,250.00, effective June 01, 2017. On the basis of this verbal agreement, I find that the Tenant was only obligated to pay \$1,250.00 in rent for June of 2017.

On the basis of the undisputed evidence I find that the Landlord agreed that the Tenant only had to pay rent of \$1,325.00, effective July 01, 2017. On the basis of this verbal agreement, I find that Tenant was only obligated to pay \$1,325.00 in rent for July of 2017 and that he remained obligated to pay that amount in rent until the Landlord withdrew his consent to a rent reduction.

In adjudicating this matter, I was guided by section 1 of the Residential Tenancy Regulation Schedule, which stipulates that any change or addition to a tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable. As the Landlord and the Tenant did not agree, in writing, that the rent would be reduced by any amount, I find that the Landlord remained entitled to collect rent of \$1,450.00, as stipulated in the tenancy agreement.

Although it is not relevant to these circumstances, I note that section 2(a) of the Residential Tenancy Regulation Schedule, stipulates that parties do not have to agree, in writing, to a rent increase, providing the rent increase complies with the *Act*.

Section 41 of the *Act* prohibits a landlord from increasing the rent, except in accordance with the *Act*. As the Landlord has never raised the rent from the \$1,450.00 which the Tenant agreed, in writing, to pay, I find that there has not been a rent increase. I

therefore dismiss the Tenant's application to dispute a rent increase.

I find that rather than a rent increase, there has been a rent decrease. Although the Landlord initially agreed to a rent decrease of \$1,250.00, I find that he reconsidered and subsequently agreed to a rent decrease of \$1,325.00. As the rent decrease was not agreed to, in writing, I find that the Landlord had the right to reconsider the amount of the decrease and I cannot conclude that the Landlord's reconsideration of the amount of the decrease constitutes a rent increase.

Section 43(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with the *Act*, the tenancy may deduct the increase from the rent. As I have found the Landlord's decision to change the rent reduction from \$1,250.00 to \$1,325.00 does not constitute a rent increase, I find that the Tenant did not have authority to withhold any amount from his monthly rent on the basis of the change in the rent reduction.

As the Tenant was obligated to pay rent of \$1,325.00 for October of 2019 and he did not pay any rent for that month, I find that he owes the Landlord \$1,325.00 in rent for October of 2019.

Section 46(1) of the *Act* authorizes a landlord to end a tenancy if rent is unpaid on any date after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

On the basis of the undisputed evidence I find that the Landlord served the Tenant with a Ten Day Notice to End Tenancy, dated October 31, 2019. As the Tenant was served with the Ten Day Notice to End Tenancy; the Tenant has still not paid rent for October of 2019; and the Tenant did not have the legal right to withhold rent for October; I find that the Landlord had the right to end this tenancy pursuant to section 46(1) of the *Act*. I therefore grant the Landlord's application for an Order of Possession and I dismiss the Tenants' application to cancel the Ten Day Notice to End Tenancy. The Order of Possession will require the Tenant to vacate the rental unit by December 31, 2019.

As I have determined that this tenancy is ending on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent, I find I do not need to consider whether the tenancy is also ending on the basis of the Two Month Notice to End Tenancy for Landlord's Use of Property. I therefore have not considered the merits of the Two Month Notice to End Tenancy which was served pursuant to section 49 of the *Act*.

I find that it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due. I therefore find it reasonable to amend the Landlord's Application for Dispute Resolution to include a claim for unpaid rent from November and December of 2019.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* is entitled to receive from the landlord on or before the effective date of the

landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

As the Tenant received a Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*, I find that the Tenant is entitled to receive the equivalent of one month's free rent. I therefore find that the Tenant was not obligated to pay rent for November of 2019, which would have been the last month of the tenancy if the tenancy had ended on the basis of that Two Month Notice to End Tenancy.

As the Tenant was not obligated to pay any rent November of 2019 and he paid \$475.00 in rent for that month, I find that the Landlord must refund the \$475.00 that was paid.

As the Tenant is still occupying the rental unit and I have granted him authority to remain in the unit until the end of December, I find that he is obligated to pay rent of \$1,325.00 for December of 2019. As he has only paid \$1,250.00 in rent for that month, I find that he owes the Landlord \$75.00 in rent for December of 2019.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to compensation, in the

amount of \$100.00, for the cost of filing an Application for Dispute Resolution.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I dismiss their application to recover the cost of filing an Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective **1:00 p.m. on December 31, 2019**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$1,025.00, which includes:

- \$1,325.00 in unpaid rent from October of 2019;
- \$75.00 in unpaid rent from December of 2019;
- less the \$475.00 that was paid for November of 2019; and
- \$100.00 in compensation for the fee paid to file the Landlord's Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order, in the amount of \$1,025.00, which names the Tenant named on the Landlord's Application for Dispute Resolution. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British

Columbia Small Claims Court and enforced as an Order of that Court.

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: December 10, 2019

Residential Tenancy Branch