



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPUM-DR, OPU-DR-PP, FFL
CNR, MNDCT, LRE, MNRT, DRI

Introduction

In this dispute, the landlords seek an order of possession for unpaid rent and utilities, a monetary order for unpaid rent, and a monetary order for the filing fee, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act* (the “Act”).

The tenant, in a cross-application, seeks an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), an order restricting the landlords’ right to enter the rental unit, an order disputing a rent increase, compensation related to dealing with bedbugs, and compensation related to emergency repairs, pursuant to sections 46, 33, 67, 41, 42, and 43 of the Act.

The tenant filed an application for dispute resolution on August 4, 2020 and the landlords filed their application for dispute resolution on August 20, 2020. A dispute resolution hearing was held for both applications on September 28, 2020. The landlords and the tenant attended the hearing and were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

It should be noted that the tenant commented several times about having witnesses and documentary evidence. However, she called no witnesses during the hearing nor did she submit any documentary evidence in respect of any of her claims.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of these applications.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the tenant entitled to compensation as claimed?
3. Is the tenant entitled to an order for a disputed rent increase?
4. Is the tenant entitled to an order restricting the landlords' right to enter?
5. Are the landlords entitled to an order of possession for unpaid rent and utilities?
6. Are the landlords entitled to a monetary order for unpaid rent?
7. Are the landlords entitled to recovery of the filing fee?

Background and Evidence

The tenancy in this dispute started on December 15, 2019 and monthly rent was \$800.00 for the period of December 15, 2019 until March 15, 2020. On March 15, 2020, the rent increased to \$1,700.00, as per clause 2 of the written tenancy agreement. A copy of the written tenancy agreement was submitted into evidence. (The tenant disputed the authenticity of the tenancy agreement, which I shall address below.)

On August 1, 2020, the landlord served the tenant with the Notice, a copy of which was submitted into evidence. The landlord gave evidence that the tenant owed \$1,000.00 on March 15, 2020, and in total owes \$8,400.00 in rent arrears. In addition, the tenant has not paid utilities (BC Hydro and Fortis BC) in the amount of \$868.26. Copies of the utility bills and a 30-day written demand letter were tendered in evidence. In concluding, the landlord added that the tenant has not paid rent for the last two months as well. He had submitted copies of a repayment plan, which he explained had not been followed by the tenant.

The tenant testified that she only obtained a copy of the tenancy agreement after repeatedly asking for it. She remarked that many parts of the tenancy agreement were faked and altered. In particular, she said that the clause which states that rent will increase to \$1,700.00 on March 15, 2020 was added after the fact. In addition, she claimed that the clause on page two of the agreement, which refers to the tenant's responsibility to pay utilities had been added on after she signed the agreement. When signing and initialing the agreement, she explained that she was signing and initialing next to a blank area. In addition, she explained that she had just come out of the hospital and was feeling drowsy and dizzy. As to the altering of the tenancy agreement, the tenant said that the landlord has done that to other tenants, and that if this had been an in-person hearing that those tenants would have attended as witnesses to the fraudulent actions of the landlords.

Regarding rent payments, the tenant testified that she has always paid the agreed-upon rent of \$800.00 in cash. However, the landlords have not provided receipts for those payments. She added that her son (or son-in-law) had paid the rent when she was in India, and that they could testify to this fact. As for the last two months of rent, she said that she has not paid.

Regarding the application for an order restricting the landlords' entry into the rental unit, the tenant testified that the landlord let a drug addict stay in one of the rental unit's rooms without her permission.

In closing submissions, the landlord remarked that the tenant's testimony is "nothing but lies." In her closing submissions the tenant said that she still resides in the rental unit (the landlord appeared to be unclear on this point) but is temporarily not there because of a family self-isolating due to the pandemic.

The tenant did not provide any testimony or refer to any evidence concerning the application for compensation related to a broken refrigerator and loss of food (which, it should be noted, does not fall under emergency repairs for which she sought compensation). Nor did the tenant provide any testimony or refer to any evidence concerning her claim for compensation related to bedbugs. It is noted that there were no receipts or other such documentary evidence to support the amounts claimed.

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.

Almost the entire case rests on the validity of the tenancy agreement. The landlord claims that the copy of the tenancy agreement submitted into evidence is the genuine agreement as signed by the parties. The tenant disputes this and claimed that the tenancy agreement is altered in parts by the landlord. Most notably, the two clauses about the rent increasing in March 2020 and with the clause about her responsibility to pay the utilities. However, the tenant provided absolutely no corroborating or supporting documentation in respect of her claim that the tenancy agreement was altered.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In this case, I find that the tenant has failed to prove that the tenancy agreement (as submitted into evidence by the landlords) is, in fact, either altered or otherwise fraudulent. Having closely examined both pages of the tenancy agreement, I do not find anything that points to it being altered. Further, the tenant's testimony that she initialled "next to a blank space" to be unconvincing. Nor was there any documentary evidence or witnesses to support her claim that she was drowsy and dizzy when she signed the agreement, which might go to capacity.

In summary, I find that the tenancy agreement included the term – agreed upon by both parties – that rent would increase to \$1,700.00 on March 15, 2020. And, as per section 43(1)(c) of the Act, "A landlord may impose a rent increase only up to the amount [...] agreed to by the tenant in writing." In this tenancy, the tenant agreed to that increase.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if they paid rent within five days of service.

The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay the full rent of \$1,700.00 when it was due on March 15, 2020. Further, there is no evidence before me that the tenant had a right under the Act to deduct some or all of the rent. It should also be noted that, as the Notice was issued for unpaid rent on March 15, 2020, and thus before the Ministerial Order M089 went into effect on March 30, 2020, I find that the Notice was validly issued.

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 landlords have met the onus of proving their claim for an order of possession for unpaid rent and a monetary order for unpaid rent and utilities. Consequently, I dismiss the tenants' application in respect of seeking an order to cancel the Notice.

Further, taking into consideration the oral testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving their claim for compensation. No testimony or documentary evidence was submitted or presented before me in order to consider these claims.

Regarding the tenant's application for an order restricting the landlords' right to enter or access the rental unit, as the tenancy is now ordered ended, I find no utility in issuing

such an order. However, the landlords are reminded that they must comply with section 29 of the Act until the tenant has vacated the rental unit.

Regarding the landlords' claim for a monetary order, I find that they are entitled to compensation in the amount of \$8,400.00 for unpaid rent and \$868.26 for unpaid utilities. 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 landlords were successful in their application, I grant their claim for reimbursement of the filing fee of \$100.00.

A total monetary award of \$9,368.26 is hereby issued as a monetary order in conjunction with this Decision, to the landlords.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant the landlords an order of possession, which must be served on the tenant and is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I grant the landlords a monetary order in the amount of \$9,368.26, which must be served on the tenant. Should the tenant fail to pay the landlords the amount owed, the landlords may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: September 28, 2020

Residential Tenancy Branch