



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 14, 2020 (the "Application"). The Tenant applied for an order that the Landlords comply with the regulations, tenancy agreement or the *Act*, as well as an order to restrict or suspend the Landlords' right to enter the rental unit, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Tenant and the Landlords attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary Matters

The Tenant stated that she did not receive the digital evidence portion of the Landlord's evidence package. The Landlords stated that a disc and a memory stick were included in the envelope which was served to the Tenant. The Landlords stated that they did not follow up with the Tenant after service of the digital evidence to ensure that the Tenant was able to access the digital files.

According to the Residential Tenancy Branch Rules of Procedure 3.10.5 Confirmation of access to digital evidence;

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2. Before the hearing, **a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.**

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

In this case, the Tenant indicated that she did not receive a copy of the Landlords' digital evidence despite the fact that the Landlords stated that a disc and memory stick were included in the same envelope as the Landlord's documentary evidence. I find that the Landlords did not confirm that the Tenant's was able to gain access to the evidence. As such, I find that the Landlords' digital evidence will not be considered as there is insufficient evidence that the Tenant was served with, or able to access the digital evidence.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlords comply with the regulations, tenancy agreement or the *Act*, pursuant to Section 62 of the *Act*?
2. Is the Tenant entitled to an order restricting or suspending the Landlords' right to enter, pursuant to Section 70 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 1, 2019. The Tenant is required to pay rent in the amount of \$2,800.00 to the Landlords which is due on the first day of each month. The Tenant paid a security and pet damage deposit both in the amount of \$1,400.00, for a total of \$2,800.00 paid to the Landlords at the start of the tenancy. During the hearing, the parties agreed that the deposits have since been applied to unpaid rent for April 2020.

The Tenant is claiming that the parties reached an agreement that the Tenant would receive a \$1,000 rent reduction from May 2020 to August 2020 due to the Tenant experiencing financial hardship as a result of Covid-19 pandemic. The Tenant stated that the Landlords agreed to this arrangement, however, in August 2020 the Tenant was served with a repayment plan for the Landlords to recover the \$4,000.00 of rent. The Tenant stated that she was under the impression that she would not have to repay the Landlords. The Tenant referred to email and text communications between the parties in support. Specifically, the Tenant acknowledged that the Landlords at no point stated that the Tenant would not have to pay back the \$4,000.00 of rent.

The Landlords responded by stating that they wanted to work with the Tenant through her financial difficulties during the Covid-19 state of emergency. The Landlords stated that during the affected months, the Landlords were appreciative that the Tenant was able to pay any amount towards rent, as the Landlords' were unable to displace Tenant for failing to pay rent during this time. The Landlords stated that they were transparent through the process, notifying the Tenant that they would work with her but that the rent would need to be repaid once the state of emergency was lifted. The Landlords referred to the email communications and repayment plan provided to the Tenant in support.

The Tenant also claimed that the Landlords have been attending the rental property unannounced. The Tenant stated that while the Landlords did not specifically enter the rental unit, they did attend the front door to discuss entering into a new fixed term tenancy with the Tenant, which ended with the Tenant attempting to close the door and the Landlord putting her foot in the doorway preventing the door from closing.

The Landlords acknowledged that they have attended the rental property without notice, however, were under the impression that no notice was required as they did not enter the rental unit.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

The *COVID-19 Related Measures Act* ("C19 Act") allows for regulations made under section 10.1 of the EPA to remain in force for up to one year after the C19 Act came into force (July 10, 2020). The *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation* ("C19 Tenancy Regulation"), was made under sections 10.1 and 10.2 of the EPA on August 14, 2020.

Sections 3 and 12 of the C19 Tenancy Regulation provide that a landlord must not give a tenant notice to end a tenancy in respect of **affected rent** that is unpaid under sections 44(1)(a)(ii) and 46 of the *Residential Tenancy Act* (RTA) and sections 37(1)(a)(ii) and 39 of the *Manufactured Home Park Tenancy Act* (MHPTA). Notices to end tenancy for affected rent may only be issued when the conditions set out in the C19 Tenancy Regulation have been met.

“Affected rent” means; rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020.

The C19 Tenancy Regulation provides that a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a **prior agreement** has been entered into and has not been cancelled. If the parties are no longer in a landlord-tenant relationship because the tenancy has ended, a repayment plan would not be required

Terms of Repayment Plan

The C19 Tenancy Regulation sets out that repayment plans must have the following terms:

1. The repayment period starts on the date the repayment plan is given by the landlord to the tenant and ends on July 10, 2021;
2. The payment of the unpaid affected rent must be in equal installments;
3. Each installment must be paid on the same date that rent is due under the tenancy agreement; and
4. The date of the first installment must be at least 30 days after the date the repayment plan is given by the landlord to the tenant.

In this case, I accept that the Tenant was unable to pay rent in full to the Landlords from for the “affected rent” from May until August 2020. I accept that the Tenant indicated to the Landlords that she would only be able to pay rent in the amount of \$1,800.00 instead of \$2,800.00. I find that at the time, the Landlords had no recourse in the matter and were required to accept any amount of rent from the Tenant from May to August 2020.

I find that the Tenant provided insufficient evidence to demonstrate that the Landlords specifically told the Tenant that she would not be required to pay the remaining balance of rent in the amount of \$4,000.00 to the Landlords. Instead, I find that it is reasonable to expect that once the state of emergency was lifted, that the parties could establish a repayment plan in order for the Tenant to repay the amount of rent owed to the Landlords. I find that the Landlords have not breached the Act, tenancy agreement, or the regulations by requesting the remaining balance of rent owed to the Landlord which had been established in their tenancy agreement. As such, I dismiss this portion of the Tenant’s claim without leave to reapply.

The Tenant is also seeking an order to restrict or suspend the Landlords' right to enter the rental unit. Section 29 of the Act which states;

- (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;

During the hearing, the Tenant acknowledged that the Landlords did not enter the rental unit without notice, instead, attended the rental unit to discuss the signing of a new tenancy agreement with the Tenant. I find that the Landlords did not breach Section 29 of the Act as they did not enter the rental unit. As such, I dismiss the Tenant's claim without leave to reapply.

Regardless, it is suggested that the Landlords notify the Tenant that they wish to discuss tenancy related matters with the Tenant in order to establish a date and time in which the parties are available to discuss such matters.

During the hearing, the parties stated that the Landlord wished to sign a new fixed term tenancy agreement, while the Tenant was unsure if she wished to do so. According to the Residential Tenancy Policy Guideline 30(D);

A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms. Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent increases are met.

Conclusion

The Tenant has provided insufficient evidence to demonstrate that the Landlord has breached the Act, or tenancy agreement. The Tenants have also provided insufficient evidence to demonstrate that the Landlord entered the rental unit without prior permission. As such, the Tenant's Application is dismissed without leave to reapply.

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 06, 2020