



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, CNR, OLC, RP, FFT, OPC, OPR, MNRL-S, MDCL-S, FFL

Introduction

In the first application the tenant applies for:

- A rent reduction,
- A repair order,
- To cancel a ten day Notice to End Tenancy for unpaid rent or utilities,
- An order that the landlord comply with the law or the tenancy agreement, and
- Recover of the filing fee for the application,

In the second application the landlord seeks:

- An order of possession pursuant to the ten day Notice,
- An order of possession pursuant to a one month Notice to End Tenancy for cause,
- A monetary award for unpaid rent and utilities,
- A monetary order for loss caused by the tenant, and
- Recover of the filing fee.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The tenant has commenced an action against the landlord in the Supreme Court of British Columbia (file number shown on cover page of this decision). That action is against the landlord and another, JL, seeking that his application with the Residential Tenancy Branch ("RTB") be heard by the Court and seeking punitive damages, exemplary damages and costs in excess of \$35,000.00 for the conduct of the landlord during this tenancy. The claim appears to allege a breach of a duty of care owed to the tenant and discrimination on the basis of race.

The landlord has been served with the court application.

As a preliminary matter it was determined that as a Supreme Court action has been commenced, it was not within the jurisdiction of this arbitrator to deal with the claim or to decide whether or not the Court has jurisdiction over the claims the tenant has made, though the tenant's RTB application seeks only \$104.00, inclusive of the \$100.00 filing fee. The tenant's application will therefore not be dealt with in this proceeding. If the Court determines that the tenant's claim comes within RTB jurisdiction then the matter can be returned to or recommenced in this forum. I grant the tenant any leave necessary to do so.

It was also determined as a preliminary matter that the landlord's claims for unpaid rent and damages and for an order of possession pursuant to either the ten day Notice to End Tenancy for unpaid rent and for an order of possession pursuant to an unchallenged one month Notice to End Tenancy for cause, were claims unrelated to the claim the tenant has made to the Court. The hearing proceeded on that basis.

Issue(s) to be Decided

Has the tenancy ended as a result of either the ten day Notice for unpaid rent or the one month Notice for cause? What, if anything does the tenant owe for rent or utilities? Has the landlord incurred a loss due to the tenant's conduct or actions involving co-tenants in the rental unit?

Background and Evidence

The rental unit is a bedroom in a six-bedroom duplex. The landlord owns the building as well as the other side of the duplex, which contains four bedrooms. The landlord rents out bedrooms to individual tenants, who are to share facilities and common areas with the other occupants in that portion of the duplex building.

This tenancy started on April 19, 2020. There is written tenancy agreement. The monthly rent is \$630.00, due on the first. An addendum to the agreement provides that if the tenant paid the first three months of rent (May, June and July) in advance then those rents would be discounted to \$600.00. The tenant made use of the discount by paying three months in advance.

The landlord testifies that the tenant paid \$550.00 for August rent, \$600.00 for September rent, \$157.50 for each of October and November rents and nothing since.

The tenant agrees those were the payments he made.

Near the end of August the landlord served the tenant with a one month Notice to End Tenancy for cause dated August 20, 2020 and purporting to end the tenancy on September 30, 2020. The landlord says he served the Notice on the tenant on August 20. The tenant says it was more like August 28. In either case, the tenant received the Notice in August.

The tenant testifies that after receiving the Notice he intended to move out at the end of September. He did not challenge the Notice by making an application to the RTB to cancel it. He told the landlord he was moving and asked him how much rent he owed for August.

The tenant says that later he decided not to move out because in September his wallet went missing, a bottle of his alcohol went missing, someone re-arranged his food shelf in the kitchen and he had a physical altercation with one of his co-tenants. It was posed (by this arbitrator) to the tenant that occurrences like that would normally be an incentive to move, not a disincentive, the tenant indicated that he also wanted to stay near the downtown area and leaving would lead to "hearsay" about his conduct while a tenant.

The landlord testifies that the tenant's conduct in the rental unit caused two co-tenants to leave, though one moved to an empty bedroom in the adjoining four-bedroom portion of the duplex. The landlord says he returned the first one's November rent and paid him \$200.00 for moving expenses. He says he paid the tenant moving next door the amount of \$200.00 for moving expenses. He has not re-rented either room.

Analysis

The One Month Notice to End Tenancy

Section 47(5) of the *Residential Tenancy Act* (the "RTA") provides that if a tenant who has received a one month Notice does not make an application to dispute the Notice within ten days after receipt, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and the tenant must move out by that date.

The tenant did not apply to dispute the Notice within the ten days after receipt or at all. The words “conclusively presumed” as used in *RTA*, leave no room for a tenant to change his or her mind unless a landlord agrees to continue the tenancy.

As a result, this tenancy ended on September 30, 2020. The landlord is entitled to an order of possession.

The Ten Day Notice to End Tenancy

In light of the finding above, it is not necessary to determine the validity of the ten day Notice.

Unpaid Rent

On the undisputed evidence of the landlord the tenant owes arrears of \$80.00 from August and \$30.00 from September. Since the tenancy ended September 30 and the tenant remained in possession, he was obliged to pay the landlord occupation rent of \$630.00 each month. In that regard he owes the landlord \$472.50 from each of the months October and November. The arrears of rent and occupation rent total \$1055.00 and I award that amount to the landlord.

The tenant continues to occupy the rental unit. I consider it unlikely that the tenant will move shortly or that the landlord will find a new tenant for any portion of the month of December. I award the landlord \$630.00 as occupation rent for December.

Unpaid Utilities

The landlord did not address this part of the claim in his testimony. I note the tenancy agreement provides that the tenant will pay “1/n of utilities.” The letter “n” is not defined. It cannot be assumed that it refers to the number of tenants occupying the six bedroom building. I find the utilities provision in the tenancy agreement to be too vague to be enforceable. Additionally, the landlord has not submitted utility bills supporting the amounts claimed in the monetary order worksheet filed in this matter and so, even if “n” could be deduced or determined, the necessary data to apply that formula is absent.

I dismiss the landlord’s claim for utilities.

Landlord Payment to Cotenants and Lost Rent

According to the landlord, two of the tenants in the duplex complained about the applicant tenant so much that the first one moved out and the second one moved next door.

The landlord says he returned the November rent of \$695.00 plus \$200.00 for moving expenses to the first tenant.

The second tenant, the one who moved next door, was given \$200.00 in moving expenses says the landlord though this amount does not appear in the landlord's monetary order worksheet.

The landlord has foregone any attempt to re-rent either of the two empty bedrooms in the six unit building, due, he says, to the applicant tenant's presence there. He claims recovery of lost rent for the two rooms for December 2020 and January 2021, a total of \$2770.00.

First, the question of whether the landlord will lose January rents is far from certain at this time and I dismiss that portion of the claim on that basis as being premature.

Regarding the payment to the leaving tenants and the purported loss of rental income from December, even assuming that it was the tenant's conduct that drove the two other tenants out, the landlord has not shown that he was seriously exposed to any monetary claim from them. A landlord is not automatically responsible for the conduct of one tenant towards another. His responsibility is to provide each tenant with "quiet enjoyment" of the rental unit. By s. 28 of the *RTA*, that term included "reasonable privacy" and "freedom from unreasonable disturbance." A landlord receiving a complaint about privacy or an unreasonable disturbance is obliged to investigate and take steps which a reasonable person would consider to be reasonable in the circumstances.

On the evidence presented at this hearing it appears that the landlord acted relatively quickly when trouble arose between the tenants; to investigate that trouble and serve the applicant tenant with the one month Notice to end his tenancy. Having attended to his responsibility in that regard it is debatable whether either of the leaving tenants would have had a claim against him for trouble being caused to them by the applicant tenant.

In the circumstances of this case I consider it more likely that the landlord acted out of a sense of goodwill to the leaving tenants rather than any thought of liability, permitting them to end their tenancies without the necessary notice and to return rent and pay moving expenses.

Neither of the leaving tenants testified at this hearing about why they left, nor were they named. The applicant tenant did not have an opportunity to question them.

In all the circumstances I find I must dismiss the balance of the claim for recovery of the money paid to the leaving tenants and for lost rent.

Conclusion

The tenant's application is before the Supreme Court and so jurisdiction to deal with it is declined.

The landlord will have an order of possession against the tenant requiring the tenant to vacate the rental property within 48 hours after being personally served with the order or 72 hours after a copy of the order is attached to his bedroom door, whichever occurs first.

The landlord is entitled to a monetary award against the tenant in the amount of \$1685.00 plus recovery of the \$100.00 filing fee for this application. The landlord will have a monetary order against the tenant for the total of \$1785.00

The landlord may apply the \$315.00 security deposit he holds against the monetary order, in his discretion.

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 08, 2020

Residential Tenancy Branch