



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding White Horse Holdings Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNE, PSF, MNDCT, OLC**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy For Cause or End of Employment (the "One Month Notice") pursuant to Sections 47, 48 and 62 of the Act;
2. An Order that the Landlord provide services or facilities required by the tenancy agreement or the Act pursuant to Section 62(3) of the Act;
3. An Order for compensation for the Tenant's monetary loss or other money owed pursuant to Section 67 of the Act; and,
4. An Order that the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, DN, and the Tenant, SA, and Support, TG, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure (the "ROP") prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord personally served the One Month Notice on October 5, 2021 to SA's brother at the residential property. SA confirmed receipt of the One Month Notice. The Landlord's One Month Notice was dated May 10, 2021, but SA was agreeable to amending the date to October 5, 2021 to avoid being re-served with another notice. The

reasons on the One Month Notice were that the Tenant has allowed an unreasonable number of occupants in the unit, the Tenant is repeatedly late paying rent, the Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit or property, and the Tenant has not done required repairs of damage to the unit or property. The Landlord failed to provide a reason why the One Month Notice was dated May 10, 2021.

The Landlord's evidence deadline was December 1, 2021, and the Landlord uploaded their evidence on December 8, 2021. ROP 3.15 states:

3.15 Respondent's evidence provided in single package: Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package. The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. (emphasis mine)

The Tenant did not receive the Landlord's evidence prior to the hearing. TG stated that the Tenant received two pictures, but neither were of the Tenant's rental unit. The Landlord stated, despite being late, they sought to rely on the evidence the Tenant uploaded on the RTB website for this hearing. I find that on account of the Tenant not receiving all the Landlord's evidence that he was submitting to rely on at this hearing, and that no explanation was provided for failure to upload the Landlord's evidence within the ROP's timelines for service of evidence, that this unreasonably prejudices the Tenant and breaches principals of natural justice beyond what I will allow in this matter. Specifically, the principals of disclosure and the opportunity to respond. The principal of disclosure is that all parties must provide all evidence that will be used against the other party; and the principal of opportunity to respond is that each party must be allowed an opportunity to know the case they have to meet and to respond to the evidence submitted against their claims.

Although the Tenant agreed to accept a change of the One Month Notice date and was willing to proceed without the Landlord's evidence on the hearing day, I find due to the Landlord breaching ROP 3.15, the Tenant was unreasonably prejudiced, and principals

of natural justice were breached. Accordingly, I find that because of these breaches, I must cancel the Landlord's One Month Notice. The Tenant's application to cancel the One Month Notice is granted. The tenancy shall continue until it is ended in accordance with the Act.

SA served the Notice of Dispute Resolution Proceeding package and her evidence for this hearing to the Landlord via Canada Post registered mail on November 4, 2021 (the "NoDRP package"). SA referred me to the Canada Post registered mail tracking number as proof of service. I have noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package and evidence. I find that the Landlord was served with the documents for this hearing five days after mailing them, on November 9, 2021, in accordance with Sections 88(c) and 89(1)(c) of the Act.

Issues to be Decided

1. Is the Tenant entitled to an Order that the Landlord provide services or facilities required by the tenancy agreement or the Act?
2. Is the Tenant entitled to an Order for compensation for the Tenant's monetary loss or other money owed?
3. Is the Tenant entitled to an Order that the Landlord to comply with the Act, regulations and tenancy agreement?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

According to the submitted tenancy agreement, this tenancy began on December 1, 2018 as a fixed term ending on December 1, 2019. The tenancy agreement states that at the end of the fixed term, the tenancy ends, and the tenant must move out of the unit. Both parties initialled this provision in the tenancy agreement. Monthly rent is \$1,300.00 payable on the first day of each month. A security deposit of \$650.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant testified that the damage to the front door and the window was due to a break and enter and not the Tenant or her family. The Tenant provided no further evidence about whether a police report was made about this break and enter. The Tenant is seeking a monetary order to compensate her for the repairs that were

completed on October 16 and 23, 2021. The Landlord submits they are not responsible for this repair as they believe the damage was caused by the Tenant's own negligence. The Landlord asked the Tenant for a police report/file, but none was provided.

The Landlord testified that the utility bills are not paid on time by the Tenant. The Tenant seeks an order that the Landlord provide services and facilities required under the tenancy agreement or that the Landlord comply with the Act, regulations and tenancy agreement. In this regard, the Tenant testified that notifications of the utility bills are often provided with insufficient time for the Tenant to pay. She asks for these utility bill notifications to be sent to her in a timelier fashion. The tenancy agreement states:

15. The tenant is responsible for the Vernon Utility Bill. This will remain in the landlord's name. The landlord will provide the tenant with a copy of the Bill, and the tenant has the option of either directly paying the City of Vernon or reimbursing the landlord. If the tenant wishes to pay the City of Vernon directly, they must provide the landlord with proof of the bill payment before the due date of the bill.

Signed by both Tenants on November 13, 2018

The Tenant sought an amendment to this file submitted on November 4, 2021. The Tenant states, "*The Landlord provided us with 3 keys: a single front door key, front door deadbolt key, and a shed key. These were on a single keychain that was lost. We are asking landlord to provide us with a second set of keys.*" The Tenant testified they still need these keys.

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.

Despite a fixed term end date of December 1, 2019, this tenancy continued on a month-to-month basis. The Landlord did not raise any issues with the continued tenancy aside from the reasons noted on the One Month Notice. I find, according to the Landlord's actions of continuing to collect rent and especially without issuing rent receipts for 'use and occupancy only', it is implied that the Landlord and the Tenant intended for the tenancy to continue. I find, based on the conduct of the parties, the tenancy has continued on a month-to-month basis.

As a caution to the Tenant, Section 26(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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 Landlord submitted since August, the rent has been paid on time.

Residential Tenancy Policy Guideline 1 - Landlord & Tenant-Responsibility for Residential Premises states that:

The landlord must give each tenant at least one set of keys for the rental unit, main doors, mailbox and any other common areas under the landlord's control, such as recreational or laundry rooms. The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense.

The Tenant wrote that she only received one set of keys at the start of the tenancy. There are two Tenants listed on the tenancy agreement. I find that an insufficient number of key sets were provided to the Tenants. As this is the Tenants' sole means of access to the residential property, I Order the Landlord to produce one more set of keys, including a front door key, a front door deadbolt key and a shed key, to the Tenant pursuant to Section 6(2) of the Residential Tenancy Regulation, and Sections 27(1) and 62(3) of the Act. It will be the Tenant's responsibility to pay for more keys to be cut if they want a set each.

Residential Tenancy Policy Guideline 16 sets out the criteria for awarding compensation for damage or loss. The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Tenant is responsible for repairing substantial damage that they cause. The Tenant claims the damage was caused by criminal activity; however, does not provide any evidence that this is the case. The Landlord believes there was no criminal activity. I find that the Tenant has failed to establish that the damage to the front door and the window were caused by criminal activity and that the value of repairing that damage resulted from the Landlord's non-compliance with the Act, regulation or tenancy agreement. I find that the Tenant is responsible for paying for the repair to the door and the window, and the Landlord is not responsible. I dismiss the Tenant's claim for monetary compensation without leave to re-apply in this matter.

Paying the utility bills is the Tenant's responsibility according to Section 15 of the addendum to the tenancy agreement which the Tenants signed on November 13, 2018. The utility bills can be paid online through your banking institution, by drop box (a secure mail slot on the City Hall front door), or by mail to the City Hall. The Landlord has forwarded the utility bills to the Tenant, it appears, on the day they receive them. This has given the Tenant anywhere from 16 to 26 days to pay these bills. The due date is clearly specified at the top of the invoice. I find, based on the two notices submitted into documentary evidence, that the Landlord has forwarded these utility bills with ample time for the Tenant to pay the invoice. These quarterly invoices come in January (due in February), April (due in May), July (due in August), and October (due in November). I Order the Tenant to expect these invoices, and to pay them promptly pursuant to your agreement in the addendum to the tenancy agreement. Any late fees sent to the Landlord for late payments of these utility bills can be forwarded to the Tenant to pay.

Conclusion

The Landlord's One Month Notice is cancelled. The tenancy will continue until ended in accordance with the Act.

The Landlord is Ordered to provide the Tenant with one additional set of keys as described above for their use during the tenancy.

The Tenant's application for a Monetary Order for compensation for the Tenant's monetary loss is dismissed without leave to re-apply.

The Landlord is Ordered to ensure that the utility bills are provided in a timely manner, and the Tenant is Ordered to pay the utility invoices promptly.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 23, 2021

Residential Tenancy Branch