Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL / MNDCT, LRE, CNL-MT, LAT

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "**Act**"). The landlord's application for an order of possession for the landlord's use of the residential property pursuant to section 55.

And the tenant's application for:

- the cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49;
- more time to make an application to cancel the Notice pursuant to section 66;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $11,000 pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was assisted by her boyfriend ("**MC**") and the landlord was assisted by his wife ("**MS**"). The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

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Preliminary Issue – Effect of Tenant Vacating Rental Unit

At the outset of the hearing, the parties advised me that the tenant vacated the rental unit on March 4, 2022. As such, the landlord advised me that he no longer required an

order of possession. As such, I dismiss his application in its entirety without leave to reapply.

Similarly, the tenant advised me that she no longer required orders that the Notice be cancelled, that she be authorized to change the locks, or that the landlord's access to the rental unit be restricted. As such, I dismiss those parts of the tenant's application, without leave to reapply.

The only issue left to be determined is the tenant's monetary claim. However, she testified that the landlord had returned $1,500 to her at the end of the tenancy, so she testified that she now seeks a monetary order of $9,500.

Issues to be Decided

Is the tenant entitled to a monetary order of $9,500?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The rental unit is the basement suite of a single detached home. The landlord lives in the upper suite, The parties entered into a written tenancy agreement starting April 1, 2015. Monthly rent was $1,500 (the "**2015 Agreement**"). On October 1, 2019, the parties entered into a new tenancy agreement which reduced the monthly rent to $1,000 per month (the "**2019 Agreement**"). This agreement was for a fixed term ending September 30, 2020.

MC testified that the reason the parties entered into the 2019 Agreement was because the tenant wanted to sublet the rental unit when she was out of the country (as she would not be using it). The landlord did not agree, but as a compromise agreed to reduce the rent to $1,000 per month. The parties agree that the tenant paid monthly rent of $1,000 per month from October 1, 2019 to December 31, 2020.

The tenant testified that, starting January 1, 2021, she allowed MC to make rent payments on her behalf. MC testified that he made most of the rent payments following this date. He testified that he understood the reason for the reduction of rent from the 2015 Agreement to the 2019 Agreement, and he assumed after the fixed term of the 2019 Agreement ended (on September 30, 2020), that the tenant's monthly rent would revert to $1,500.

MC testified that the landlord and he had a conversation in late 2020 and that the landlord told him that the tenant could make $1,000 monthly rent payments until the end of the year, but that the monthly rent would revert to $1,500 starting in January 2021.

Accordingly, MC paid the tenant's monthly rent of $1,500 from January 2021 onwards. From January 1, 2021 to February 28, 2022, MC paid $1,500 per month in rent on behalf of the tenant.

The tenant testified that she was unaware that MC was paying $1,500 per month on her behalf during much of this time. She testified that she understood rent was to have remained at $1,000, per the 2019 Agreement. She testified that she first learned that MC was paying $1,500 a month when she received an email from the landlord in November 2021.

However, she submitted a letter into evidence which he sent to the landlord on February 18, 2022 which stated that she did not discover this discrepancy until February 2022, when the landlord provided her with receipts for "use and occupancy only" which listed the amount of rent as $1,500.

The tenant seeks the reimbursement of $7,000 for over payment of rent between January 1, 2021 and February 1, 2022 ($500 x 14 months = $7,000).

The landlord testified that he understood the 2019 Agreement to represent an agreement to temporarily reduce monthly rent by $500, which would end at the end of the fixed term. He testified that MC told him that the tenant was pregnant with twins and asked if the rent reduction could be continued for October, November, and December 2020. The landlord testified he agreed, but required that rent would return to $1,500 on January 1, 2021. He testified that he understood that the tenant accepted this, given that starting January 1, 2021, $1,500 in rent was paid. He testified that it was the tenant, and not MC, who is paying monthly rent, as he received her payments the e-transfer from her email address. He did not submit any proof showing the email address the e-transfers came from into evidence.

The landlord testified that, at the time the 2019 Agreement was entered into, everyone was fully aware that the $500 deduction was to allow the tenant to travel and leave the rental unit vacant (as opposed to subletting it). He said that the tenant never objected to the rent returning to $1,500 on January 1, 2021. He argued that the reversion to $1,500 only became an issue when he issued the Notice in November 2021, and even then, not immediately.

He submitted an email from the tenant dated November 26, 2021, which is part of a chain between the landlord and the tenant relating to the Notice and negotiations about ending the tenancy. In it the tenant wrote:

> As stated, it's not fair that we are paying $1500/mo just to store our things and potentially have no home to return to. You could have told us this summer before we left. If we could remove everything this weekend we would, although with the

> current state of emergency in BC, it would take part of the month of December to finish.

In a second email sent by the tenant that day, the tenant wrote:

> At this point we have already paid three months at $1,500/mo for basically storage.
> […]
> We paid $1,500/mo for Sept-Nov but will you reimburse us back the month of November along with currently held security deposit in interest, and thus we will have paid you $3,000 for storage.

The landlord stated that this demonstrates that the tenant was aware that monthly rent was $1,500, notwithstanding the written terms of the 2019 Agreement.

The tenant also seeks $4,000 in compensation due to access to the rental unit being blocked with a padlock for October, November, December 2021, and January 2022. She testified that the rental unit is accessed via stairway along the side of the house and that there is a gate at the top of the stairway. She testified that the landlord placed a padlock on this gate and locked it during the months set out above. She testified that she was out of the country when the padlock was first installed and she asked him to place the key to the padlock in her vehicle (which he had access to). She testified that the landlord declined to do this, and told her that he would unlock the gate in the morning and lock it when he went to bed at night.

She testified that, while she did not occupy the rental unit during the relevant period, she needed friends to pick up items from the unit to send to her (she was again living abroad). She testified that because of the presence of the padlock, they were unable to do this. She testified that she was only aware of one instance when somebody attended the rental unit but was not able to gain entry. She stated that three or four other times her parents *would* have gone to the rental unit but declined to because they believed they would not have access to it. She did not provide any documentation supporting this assertion.

However, the tenant provided screenshots of the smart lock interface for the rental unit's front door. It indicated that on December 18, 2021, the tenant's parents entered an incorrect access code on the door's touch panel, and on December 19, 2021 they successfully entered the code and gained access to the rental unit.

The tenant submitted a written statement from her parents into evidence. In it they wrote:

> [The tenant] advised us on October 10, 2021 that [the landlord] told her he was installing a keypad lock on the external gate and placing one of the two keys to it inside [the tenant's] car on the shared driveway, but that he would himself unlock

> the padlock everyday during the daytime period prior to [the tenant] leaving to Europe one of her two car keys was given to the landlord and the second one to us. When we arrived first at the external gate we saw the new key padlock hanging on the gate. Fortunately, when we arrived, the lock had already been unlocked and we didn't need to open [the tenant's] car to get the key period we were unable to enter [the tenant's] primary entrance door on that day due to using the incorrect code. We had brought [the tenant's] baby stroller over but could only leave it inside the shared workshop storage room with a handwritten note for the landlord stating we would return the following day to move it inside the house. We returned on December 19, 2021 at 3:19 PM and were able to enter [the tenant's] primary entrance door with the correct code and move the stroller inside. The keypad lock had been removed from where it was the prior day. We have not been to [the tenant's] place since then so it is unknown if the padlock was put back on the gate after we left that day.

The landlord testified that one day in September 2021, he found the rental unit door ajar, when he knew the tenant was out of the country. He believed that the tenant's parents had come over and not fully closed the door. As an added security precaution, he placed the lock on the gate at the top of the landing. He advised the tenant of this, and agreed that she asked him to put the key to it in her vehicle. He stated that he did not want to do this, as he did not know who would have access to the key.

In any event, the landlord testified that he never physically locked the gate. Rather he testified that the lock was hooked onto the lattice beside the gate. He stated that on one occasion the tenant's parents came to the rental unit, and first knocked on the upper unit door to obtain a key. He testified that he provided them with his spare key to access the rental unit, but that he did not need to give them a key to the padlock as it was not locked.

The landlord pointed out that the tenant had not provided any evidence that the padlock was ever actually locked, and that the tenant at no point communicated to him that any of her friends were unable to gain access to the rental unit because of the presence of the padlock. He testified that while the tenant was away in late 2021, her parents came over to the rental unit on four separate occasions, and on none of those occasions did they require a key to open the padlock.

As such, he submitted that the tenant's parents were not prevented from gaining access to the rental unit by the presence of a lock on the gate at the top of the stairs leading to the front door of the rental unit.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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.

As such, the tenant must prove it is more likely than not that:

1) she was entitled to pay $1,000 in monthly rent from January 1, 2021 to February 1, 2022; and
2) The landlord restricted or prevented access to the rental unit for her guests by placing a lock on the gate at the top of the stairs leading to the rental unit.

1. <u>Reimbursement of overpaid rent</u>

The tenant's position is quite simple: the parties entered into the 2019 Agreement which reduced the rent to $1,000, and at the end of the fixed term, the 2019 Agreement converted to a periodic tenancy pursuant to section 44(3) of the Act. As such, any amount that she paid in excess of $1,000, represents an overpayment to the landlord, and she is entitled to its return.

The landlord's position is that he agreed to temporarily reduce the tenant's monthly rent for one year, which the parties attempted to memorialize by way of the 2019 Agreement, then he agreed to keep the reduced rent in effect for October, November, and December 2020 rent, due to financial constraints caused by the tenant's pregnancy. Following this further three-month reduction, he argues that the temporary reduction authorized by the 2019 Agreement lapsed, and monthly rent returned to $1,500.

As proof of this arrangement, the landlord points to the fact that MC paid $1,500 in monthly rent on the tenant's behalf from January 2021 onwards and that, in two November 26, 2021 emails, the tenant wrote that she was paying $1,500 per month. What is significant about this is what is missing from these letters: they do not contain any reference to being overcharged monthly rent or that MC had unintentionally overpaid rent.

The tenant did not raise the issue of rent not being $1,500 per month until February 2022, when she wrote that she did not learn she was being charged this amount until having received rent receipts marked "for use and occupancy" for January and February 2022. This assertion is plainly contradicted by the tenant's November 26, 2021 emails.

The 2019 Agreement states that monthly rent is $1,000. No further written agreement has been submitted into evidence which shows that the parties deviated from this agreement. Under the ordinary operation of the Act, this would mean that once the fixed term of the 2019 Agreement ended, the tenancy would continue on the same terms for a month-to-month basis.

However, based on the evidence presented to me at the hearing, I do not find that the 2019 Agreement represented an agreement by the parties to permanently alter the terms of the tenancy. Rather, I accept the landlord's testimony, which was corroborated by MC, that the reduction of monthly rent to $1,000 was intended, by all parties, to be a temporary reduction so as to alleviate financial pressure on the tenant. The parties (incorrectly) used a standard form tenancy agreement to memorialize this arrangement. I do not find that the parties intended to permanently alter the tenancy agreement.

The preponderance of probabilities lies with the landlord. I find that it is more likely than not that the parties agreed to temporarily reduce the tenants rent for one year in exchange for her not subletting the rental unit, and then the landlord agreed to extend this reduction for a further three months due to the tenant's pregnancy in recognition of the financial strain that a newborn child can place on a family. The payments made by the tenant (or MC) accord with this version of events. additionally, based on the November 2021 emails I find that tenant was aware and approved of the return of monthly rent to $1,500. more likely than not that if this return to prior levels of monthly rent as objectionable to her that she would have complained about it to the landlord prior to February 2022.

As such, I do not find that the 2019 Agreement was a new tenancy agreement (notwithstanding the fact that he used a standard form tenancy agreement document). Rather, I find that it was an agreement to temporarily reduce rent, which was incorrectly memorialized using standard form tenancy agreement document. The conduct of the parties subsequent to the 2019 Agreement going into effect supports this finding.

I dismiss this portion of the tenant's application, without leave to reapply.

2. Locked Gate

As stated above, the tenant bears the onus to demonstrate that she or other people she permitted into the rental unit were prevented from accessing the rental unit due to the landlord installing the padlock on a gate at the top of the stairs leading to the rental unit.

Given that the tenant was out of the country during the period she alleges the lock was in place, cannot be said that she was denied access to the rental unit (even if the gate was locked).

On the tenant's own evidence, there is only one occasion when somebody attended the rental unit and was not able to access it due to the presence of the gate being locked. The tenant did not provide a specific date when this occurred. Indeed, the one piece of evidence provided by the tenant relating to who accessed the rental unit was the log from her smart lock on the rental unit's front door. It showed that her parents were able to enter their code on two separate occasions in December 2021.

The tenant's parent's letter does not describe any incident where they were prevented from accessing the rental unit due to the presence of the gate lock. Indeed, both times they attended the rental unit they were able to get access to the front door, and they wrote that they had not returned since then so they could not provide any information as to whether the gate lock was still in place.

I do not find that the tenant has suffered any harm by being herself unable to access the rental unit. Even if the gate were locked as alleged, she would not have access the rental unit as she was out of the country. Furthermore, she has only alleged one instance of when individuals (her parents) attended the rental unit and were unable to gain access to the rental unit. Based on the fact they were able to enter the rental unit on December 19, 2021, and on the absence of corroborating evidence showing her parents were unable to access the rental unit on any other occasion, I find that the tenant has failed to discharge her evidentiary burden to prove that her parents (or anyone else) were unable to access the rental unit as a result of the presence of the lock.

The tenant has not provided any corroborating evidence to support her allegation that her friends would have attended the rental unit to retrieve items, but did not, as a result of the lock being present.

As such, I find that even if the lock were present on the gate (which I explicitly make no finding on), the tenant has not shown how the presence of this lock caused her any damage or loss. As such I dismissed this portion of her application.

Conclusion

I dismiss the tenant's application, 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: May 25, 2022

Residential Tenancy Branch