



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes OLC FFT

Introduction

The tenant seeks an order under section 62(3) of the *Residential Tenancy Act* (the “Act”) and they seek to recover the cost of the filing fee under section 72 of the Act.

Attending the dispute resolution hearing were the tenant, the tenant’s brother, and the tenant’s advocate. The landlord did not attend the hearing, which began at 11:00 AM and ended at 11:28 AM.

The tenant gave evidence, under oath, that they served a copy of the *Notice of Dispute Resolution Proceeding* on the landlord by leaving it in the landlord’s mailbox on May 24, 2022. Based on this undisputed evidence it is my finding that the tenant served the required notice and documentary evidence necessary for the landlord to participate in the dispute resolution proceedings.

Issues

1. Is the tenant entitled to an order under section 62(3) of the Act?
2. Is the tenant entitled to recover the filing fee cost?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on November 1, 2021. Monthly rent is \$1,000.00. The tenant paid a \$500.00 security deposit. There is no written tenancy agreement in evidence, and the landlord has refused to provide a written tenancy agreement, despite being asked. The rental unit is a three-bedroom basement suite in which five people live.

The particulars of the tenant's application are as follows:

I brought a friend to stay for a few days overnight. Without my permission, my landlord charged rent to my guest, [N.], and allowed him to stay in my rental area (my room in Room and Board) and charged me full rent for the shared area. I pay \$1000.00 a month and she charged my guest \$700 for the same space when I refused to sublet my area. [N.] has now finally moved out but I would like my landlord to charge me less as I shared my space.

The tenant testified that the landlord let this third party stay in the tenant's room in the rental unit. The third party's parents paid the landlord money as rent. The third party was in the tenant's room for three weeks. The landlord did not obtain any sort of permission from the tenant to let this third party occupy his bedroom, and as such the tenant seeks a reduction in rent for the time the third party was in there. During the hearing the tenant stated that he sought to obtain a \$500.00 reduction in rent.

In addition, the tenant testified that the landlord has not provided any receipts for rent payments since March 2022. Further, the landlord's children are harassing the tenant to pay rent. A police report has been filed. In addition, the tenant and their advocate explained that the landlord had shut off the hot water for a period of time as possible retaliation for the dispute being filed.

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.

Section 62(3) of the Act, the section of the legislation under which the tenant makes their application, states that

The director may make any order necessary to give effect to the rights, obligations, and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

In this dispute, the landlord permitted another occupant to occupy the tenant's bedroom in the rental unit without the tenant's permission. Section 28(c) of the Act states that

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following [. . .] exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

The undisputed evidence of the tenant persuades me to find that the landlord breached section 28(c) of the Act by having this third-party occupant stay in the tenant's bedroom without permission. Further, the \$1,000.00 rent that the tenant is paying for the exclusive possession of the rental unit, and this includes his bedroom.

Having found that the landlord breached the tenant's rights under the Act and the unwritten, oral tenancy agreement, it is my order, pursuant to sections 62(3) and 65(1)(f) of the Act, that the tenant is entitled to a one-time, retroactive rent reduction in the amount of \$500.00. This amount represents the value lost in the rent by the landlord's permitting another occupant to reside in the tenant's bedroom.

The tenant is hereby authorized, pursuant to section 65(1)(f) of the Act, to make a one-time deduction of \$500.00 from their rent for October 2022.

Section 26(2) of the Act states that "A landlord must provide a tenant with a receipt for rent paid in cash." Effective immediately, and pursuant to section 62(3) of the Act, the landlord is ordered to provide the tenant with a receipt for all rents paid in cash since March 2022 and must provide receipts for all future rent paid in cash. (E-transfer rent payments are excluded from this order.)

Section 13(1) of the Act states that "A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004."

Despite the tenant's and his brother's request that the landlord produce a written tenancy agreement, the landlord has so far refused to provide one. This is, I find, a breach of the Act. Thus, pursuant to sections 13(1) and 62(3) of the Act, the landlord is hereby ordered to, within two (2) days of receiving a copy of this Decision, prepare and provide to the tenant a copy of a written Residential Tenancy Agreement. The tenancy agreement must not deviate from any previously agreed upon terms made during the oral agreement; rent must remain the same. The landlord must use the Residential Tenancy Branch's approved form #RTB-1 available at:

www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb1_chrome.pdf.

Section 28(b) of the Act states that a tenant is entitled to freedom from unreasonable disturbance. It is my finding that the landlord or her children are being sent frequently to the rental unit to “harass” the tenant about rent. Indeed, a police report regarding this harassment has resulted from the behavior. Therefore, pursuant to section 62(3) of the Act, the landlord is hereby ordered to comply with section 28(b) of the Act. The landlord or her children may not attend to, visit, or otherwise communicate or contact with the tenant unless it is for the purposes set out and permitted by section 29(1) of the Act.

Last, as explained to the parties during the hearing, the landlord’s “notice to end tenancy”—a copy dated June 1, 2022 was in evidence—does not meet any of the statutory requirements set out in sections 44 and 52 of the Act. A landlord may only end a tenancy in compliance with the Act, which includes using the required form.

The tenant was successful in this application and is thus entitled to recover the cost of the application filing fee under section 72 of the Act. As such, pursuant to section 72(2)(a) of the Act, the tenant may deduct \$100.00 from his rent for October 2022.

Conclusion

IT IS HEREBY ORDERED THAT:

1. The tenant deduct \$600.00 from their rent for October 2022.
2. The landlord provide a receipt for all rent cash payments since March 2022.
3. The landlord provide a receipt for any future rent cash payments.
4. The landlord prepare and provide to the tenant a copy of a completed, written *Residential Tenancy Agreement* within two (2) days of receiving a copy of this Decision.
5. The landlord, their children, or any other agent representing the landlord, may only contact the tenant for the purposes set out in section 29(1) of the Act.

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

Dated: September 12, 2022

Residential Tenancy Branch