



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, LRE, LAT, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- disputing a rent increase;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- an order permitting the tenants to change the locks to the rental unit;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing from the landlord for the cost of the application.

Two of the tenants attended the hearing, and represented the other tenant. The landlord also attended accompanied by the landlord's spouse. One of the tenants and the landlord gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The parties agree that the tenants' evidentiary material has been provided to the landlord, and no evidence has been provided by the landlord. Therefore, all evidence of the tenants has been reviewed and is considered in this Decision.

The Rules of Procedure specify that multiple applications contained in a single application must be related, which I found to be the tenants' application for an order cancelling a notice to end the tenancy. However, at the commencement of the hearing the landlord agreed to cancel the Notice, and the hearing continued with respect to the

balance of the tenants' application. At the end of the hearing the landlord indicated that he changed his mind and does not agree to cancel the Notice.

During the course of the hearing the tenants withdrew the application for an order permitting the tenants to change the locks to the rental unit.

Issue(s) to be Decided

The issues to be decided are:

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act* or should it be cancelled?
- Have the tenants established that rent has been increased contrary to the law?
- Have the tenants established that the landlord's right to enter the rental unit should be limited or allowed conditionally?
- Have the tenants established that the landlord should be ordered to comply with the *Act* or the tenancy agreement, specifically giving proper notices to enter or inspect the rental unit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on October 1, 2020 and reverted to a month-to-month tenancy after the first year, and the tenants still reside in the rental unit. Rent in the amount of \$1,800.00 was payable on the 1st day of each month at the commencement of the tenancy. On September 29, 2020 the landlord collected a security deposit from the tenants in the amount of \$1,800.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a house, and the landlord resides 2 doors down.

The tenant further testified that on October 2, 2022 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by taping it to the door of the rental unit. A copy of 1 page has been provided for this hearing, and it is an older form and states that the tenants failed to pay rent in the amount of \$1,900.00 that was due on October 1, 2022. The tenant has not signed a new tenancy agreement for \$1,900.00. Only 1 page was served. The landlord tried to increase rent again.

The tenants have provided a copy of 2 bank drafts, both dated October 1, 2022 and both are in the amount of \$1,800.00, and both marked "Oct 1/22 Rent." The landlord

said he was increasing rent again from \$1,900.00 to \$2,000.00. The tenant tried to pay \$1,900.00 but the landlord wouldn't accept it and served the Notice. With police help, the landlord accepted the \$1,900.00 and said he wouldn't increase it to \$2,000.00. Police had been called on 3 occasions, who told the landlord that he couldn't increase the rent to \$2,000.00. The landlord started being irrational and freaking out and, and as a result of the police calming the landlord down, the landlord agreed that he wouldn't increase rent. Rent hasn't been increased since.

With respect to the application for an order limiting or setting conditions on the landlord's right to enter the rental unit, the tenant testified that the landlord arrives at the rental unit and bangs on the door at midnight or 10:00 p.m. and scares the tenants. The landlord also has his kids and wife shoveling snow on the roof of the rental unit at night.

The tenant does not believe the landlord has entered when the tenants are not home, and the tenant withdraws the application for an order permitting the tenants to change the locks to the rental home.

The tenants seek an order that the landlord complies with the *Act* by giving proper notices to enter the property, which never happens for any reason except on 1 occasion; the landlord just requires the tenants to comply with rules, but the landlord does not, such as rent increases. The landlord just does what he wants.

The landlord testified that he agrees with the tenant's testimony regarding the tenancy agreement and the security deposit.

The landlord served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 2, 2022 by posting it to the door. Utilities will also be due once the landlord adds up all the bills. The tenants owe \$1,200.00 for water bills, and disputes that water is included in the rent.

The landlord also testified that the tenants took in other people illegally that don't pay anything. The landlord told the tenants that the extra person must be out.

Two weeks ago the tenant said that she had forgotten about this hearing and the landlord wasn't going to attend, but decided that he should.

Analysis

During the hearing, the landlord was interruptive and was warned several times and scolded once due to interruptions and laughing disrespectfully during the tenant's testimony.

I don't normally provide a decision during a hearing, considering that I am required to provide a written Decision. However, in this case, the landlord agreed to cancel the Notice, and after testifying and hearing the testimony of the tenant, the landlord indicated that he changed his mind and does not want to cancel it. I told the parties that I was cancelling it, and while giving reasons, the landlord again interrupted me stating that he can end the tenancy even on a note so long as all pertinent information is on the note and that no specific form is required.

I disagree. The *Residential Tenancy Act* specifies how a tenancy ends, and specifies as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

I agree that using an older version of the approved form can be acceptable so long as it contains the required information, however the form used is a 2-page form, and the tenant testified that only 1 page was received. The tenants have provided only 1 page for this hearing, and no evidence has been provided by the landlord. Therefore, I am not satisfied that the landlord has complied with the *Act* by giving the Notice in the

approved form, and I cancel it. The tenancy continues until it has ended in accordance with the law.

The tenants have also disputed a rent increase. The law permits a landlord to increase rent no sooner than 1 year after the tenancy began or 1 year after the latest rent increase. The landlord must serve a Notice of Rent Increase in the approved form at least 3 months prior to the increase taking effect, and may only be increased by the amount specified in the regulations.

I also refer to Residential Tenancy Policy Guideline 37B which refers to an agreed rent increase. It states that a tenant may voluntarily agree to a rent increase greater than the maximum annual rent increase, but such an agreement must be in writing, must clearly set out the amount of the rent increase, must clearly set out any conditions for agreeing to the rent increase, must be signed by the tenant and dated the day the tenant signed the agreement. In this case, there is no evidence that the tenant agreed to the increase in writing, or that the landlord served a Notice of Rent Increase in the approved form at least 3 months prior to any increase taking effect. The tenants have also provided evidence that the landlord has attempted to increase rent again to \$2,000.00 without giving a Notice of Rent Increase.

The tenant testified that the increase to \$1,900.00 was effective in October, 2021 and the tenants have provided a copy of a bank draft in the amount of \$1,800.00 dated October 1, 2022. The landlord testified that rent was increased effective October 2021 verbally and the tenant agreed. I find that the tenants have established a claim of \$100.00 per month from October, 2021 to February, 2023, for a total of **\$1,700.00**.

I have also reviewed a letter from the landlord provided by the tenant indicating that late rent after the 1st of the month will be subject to a fee of \$25.00 per day, also not permitted under the *Act*. A landlord may charge a fee of up to \$25.00 for late rent, not per day, and only if a late fee is contained in the tenancy agreement.

The tenants have also provided a copy of an Addendum signed by the landlord but not by the tenants dated October 1, 2022, which is of no force and effect.

Both the letter and the Addendum also indicate that no subletting is permitted. I find that the landlord is not educated in what subletting means. It means that the tenants move out and sublet the rental unit to another tenant, making the tenants the landlord of the tenants and the tenants remain tenants of the landlord. In this case, the tenants have not vacated the rental unit.

The tenants have also provided a copy of a receipt showing that the security deposit of \$1,800.00 was collected by the landlord dated September 5, 2020. The law permits a landlord to collect half a month's rent only as a security deposit and states that a tenant may deduct the overpayment from rent or may otherwise recover the overpayment.

Limits on amount of deposits

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Since the landlord collected twice the allowable security deposit, I grant a monetary order in favour of the tenants as against the landlord in the amount of **\$900.00**. That then means that the landlord, once the amount has been paid, will hold a security deposit in the amount of \$900.00.

A landlord is required to provide a tenant with quiet enjoyment of a rental unit. Removing snow from the roof of the rental unit after midnight does not demonstrate quiet enjoyment. The landlord testified that it has only happened once and that he has never entered the rental unit without giving proper notice. However the tenants have also provided a photograph of a fence that the landlord has stored in the driveway of the rental unit.

The *Residential Tenancy Act* specifies:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) 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*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I order that the landlord comply with the *Act* and remove the fence immediately. The rental property is for the use of the tenants only, not for the landlord's storage.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the **\$100.00** filing fee.

Having found that the landlord is indebted to the tenants the sum of \$1,700.00 for an unlawful rent increase and \$900.00 for overpayment of the security deposit and \$100.00 for the filing fee, I grant a monetary order in favour of the tenants as against the landlord for the total amount of \$2,700.00. I order that the tenants be permitted to reduce rent until that sum is realized, or may otherwise recover it by serving the order on the landlord and filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2022 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I further order that the landlord may not increase rent unless the landlord has complied with the *Act* and the regulations.

I further order that the landlord comply with the *Residential Tenancy Act* by providing the tenants with quiet enjoyment of the rental unit, and by not entering onto the rental property unless the landlord has given no less than 24 hours written notice which must include the date and time of entering and the purpose, which must be reasonable.

The tenants' application for an order allowing the tenants to change the locks to the rental unit is hereby dismissed.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$2,700.00**, and I order that the tenants are permitted to reduce rent for future months until that sum is realized, or may otherwise recover it.

This order is final and binding and may be enforced.

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: February 23, 2023

Residential Tenancy Branch