



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, LRE, OLC

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Cancellation of a 10-day Notice to End Tenancy for Unpaid Rent, issued on or about 2 April 2023 [the 'Notice'].
2. Compensation for monetary losses in the amount of \$797.33 [the 'Compensation Claim'].
3. Suspension of landlords' right to enter unit [the 'Entry Claim'].
4. Compliance with the tenancy agreement [the 'Compliance Claim'].

The landlords appeared at the continuation of this hearing on 10 July 2023. The tenants also appeared.

Issues to be Decided

In my interim decision, I dismissed the Entry Claim and the Compensation Claim.

During the continuation of this hearing, the tenants complained that the landlords had not returned to them \$600.00 that they had paid as a security deposit [the 'Deposit']. But in my interim decision of 25 May I prohibited the tenants from amending their application, and so this is not an issue before me.

I am left with two issues to decide in this application:

Should I cancel the Notice?

What is the agreed-upon rent, and what amount of rent did the tenants owe for April 2023?

Background and Evidence

The landlords told me that they had advertised this rental unit for \$1,200.00 monthly rent. The tenants then met with the landlords and agreed to rent this unit. The parties signed a tenancy agreement. And the tenants paid the Deposit.

The tenancy began on 1 March. The landlords told me that on that day the tenants asked if they could rent more of the rental property for an additional \$150.00 *per* month. The landlords consented.

Together the parties amended the agreement: in the box for the amount of rent, the parties crossed out '1200' and (said the landlords) wrote in the top corner of that box, '1350'; and then both parties initialled these changes [the 'Amendment']. These changes were made in blue ink. The landlords then collected \$150.00 from the tenants.

Then, on 4 March, the tenants changed their minds: they didn't want to rent more of the space, and wanted to return to the original agreement. The landlords agreed, and asked how the tenants wished to have the \$150.00 returned. The tenants suggested that it could go towards rent for April.

Then the tenants again changed their minds, and said that they *did* want to occupy more of the property, but *not* for an additional \$150.00 per month. The landlords did not agree.

At this point (the landlords told me) the tenants must have crossed out the New Rent in the agreement, and written in '\$1200'. The landlords note that both the crossing-out and the '\$1200' are in black ink, and these changes are not initialled in black ink, *i.e.* the only initials that appear are in blue ink, and are from the original amendment for the New Rent.

A copy of this agreement was submitted as part of this dispute. This agreement reads (in part), 'The tenant will pay the rent of...' and then '1200' appears written in by hand in blue ink. This has been crossed out in blue ink. Next to it is an illegible, blacked-out

portion. Next to both are two sets of initials in blue ink. And then above all of this is written, '\$1200', in black ink.

The tenants then went ahead and moved their belongings into more of the property and occupied that space, despite the landlords' disagreement with that proposal. The tenants don't deny occupying more of the property, but say that the landlords agreed to this, and for the original rent of \$1,200.00 per month.

For their part, the tenants told me that on 25 February they paid \$1,200.00 in rent for March. Then the landlords complained that rent was short, and so the tenants paid a further \$150.00 on 1 March. But the tenants tell me they did so under duress, and they still asserted that the rent was only to be \$1,200.00.

The parties agree that next, on 1 April, the tenants paid \$1,048.00. And the tenants also say that they paid a further \$2.00 in rent by leaving a \$2 coin on the stairway where they hoped the landlords would find it. But the landlords deny that the tenants left a coin for them.

The tenants continued to occupy that space through May and June, and paid \$1,200.00 for each of those two months.

Analysis

I have considered all the statements made by the parties and the documents to which they referred me during this hearing. And I have considered all the arguments made by the parties.

The tenants argue that the rent has always been \$1,200.00 *per* month, and that there was never any Amendment to the tenancy agreement. The claims by the landlords that rent should be \$1,350.00 were made after the tenants moved in, and were an attempt to coerce extra payments from the tenants.

The landlords, however, say that the Amendment is an accurate reflection of the agreement. The copy of the tenancy agreement with the changes made in blue ink support this. As does the fact that the tenants initially paid the extra \$150.00, and then occupied more of the rental property, as *per* that Amendment.

What changed, argued the landlords, is the tenants: they decided that they wanted to occupy more of the space without paying for it.

I accept the landlords' argument: it is internally consistent. By this I mean that the version of events as described by the landlords is more likely than that of the tenants. Of greatest significance, I find, is that the tenants continued to occupy the extra space in the rental property. If they did not want to incur the extra cost of \$150.00 *per* month in additional rent, then they would not have occupied the extra space. The landlords made it clear that to occupy more space would cost more, and the tenants initially agreed to this, then changed their minds, but moved into the extra space anyway.

I do not find it probable that, after moving in, the landlords attempted to coerce the tenants into paying more rent. What is more probable is that, on moving in, the tenants enquired about occupying more space, and the landlords agreed, but for an additional cost. This is reasonable, and, therefore, more probable. It is also supported by the initials of the parties in blue ink to the Amendment.

The changes made in black ink to the rental agreement are not initialled by the parties, and I accept that the tenants probably made these changes in order to support their claim after the fact that the rent should only be \$1,200.00, despite occupying more than the agreed-upon space.

Accordingly, I find that the parties agreed by virtue of their Amendment, and by the post-Amendment conduct of the tenants by moving into more of the space, that rent was \$1,350.00 *per* month. Having found this, I must dismiss the Compliance Claim, which is a claim that the landlords adhere to the pre-Amendment agreement.

The parties agree that only \$1,048.00 was paid for April. The tenants claim that they left a further \$2.00 on the stairs for the landlords to collect. I accept that this did not happen: the landlords looked for this coin, and never found it. This means that rent for April was \$302.00 short.

The parties also agree that only \$1,200.00 was paid in rent for May and June. This means that there were \$300.00 owing for those two months.

I uphold the Notice, and, having found in my interim decision that it is an effective notice, section 55 (1.1) of the *Residential Tenancy Act* [the 'Act'] requires that I order

that the tenants pay the landlords unpaid rent for April, May and June, in the total amount of \$602.00.

Conclusion

I order that the tenants pay to the landlords \$602.00 for unpaid rent *per* section 55 (1.1) of the Act.

I authorise the landlords to retain the Deposit in partial satisfaction of this sum *per* section 72 (2) (b) of the Act. This leaves a balance of \$2.00.

The landlords must serve this order on the tenants as soon as possible. If the tenants do not comply with my order, then the landlords may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlords can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 9 August 2023

Residential Tenancy Branch