



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, DRI, OLC
OPR-DR, MNRL, MNR-DR, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by 2 tenants and by the landlord. The tenants have applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; disputing a rent increase; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord has applied as against 1 of the tenants for an order of possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant.

Both tenants and the landlord attended the hearing and the landlord was represented by his daughter as agent. The landlord's agent and each of the tenants gave affirmed testimony, and the landlord's agent called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

The parties agreed that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the applications is considered in this Decision.

Issue(s) to be Decided

- 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*?
- Have the tenants established that rent has been increased contrary to the law?

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, specifically for overpayment of rent and loss of use of the rental unit?
- Should the landlord be ordered to comply with the *Act* or the tenancy agreement, specifically with respect to rent increases?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

Background and Evidence

The landlord's agent (HB) is a daughter of the landlord, who testified that this fixed-term tenancy began on April 1, 2017 with the tenant (DS) only, and reverted to a month-to-month tenancy after September 30, 2017, and still resides in the rental unit. Rent in the amount of \$1,200.00 was payable on the 1st day of each month, which has been increased. On February 26, 2017 the landlord collected a security deposit from the tenant in the amount of \$550.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is the top suite only of a house, and the basement suite was off-limits to the tenant, used for storage by the landlord. A copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that rent was increased by \$150.00 to \$1,350.00 effective September 1, 2018, and was accepted as a tenancy agreement by the tenant by text message, and the tenant has been paying that amount for the last 5 years. The tenant is currently in arrears of rent the sum of \$150.00 for July and \$1,350.00 for August, 2023. The tenant paid \$600.00 the day of the hearing, which the landlord has not yet accepted.

The second tenant (DW) entered into another tenancy agreement with the landlord for a month-to-month tenancy, which included the house with the basement suite, for rent in the amount of \$800.00 payable on the 1st day of each month, and there are no rental arrears. At the outset of that tenancy the landlord collected a security deposit from the tenant (DW) in the amount of \$400.00, which is still held in trust by the landlord, and no pet damage deposit was collected.

On July 2, 2023 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit, and a copy has been provided for this hearing. It is dated July 2, 2023 and contains an effective date of vacancy of July 15, 2023 for unpaid rent in the amount of \$1,350.00 that was due on July 1, 2023. It is addressed only to the tenant (DS).

The tenant paid \$600.00 on each of July 1, August 1 and September, 2023, and currently owes \$750.00 for each of those months.

The landlord has provided a Monetary Order Worksheet setting out the following claims totaling \$11,848.80:

- \$336.00 for lawyer fees;
- \$100.00 for the application fee;
- \$2,700.00 for rental losses for September and October, 2023
- \$4,099.25 for landscaping costs;
- \$125.00 for replacing a door;
- \$1,000.00 to replace the fridge;
- \$500.00 to replace the AC;
- \$138.55 for a water bill;
- \$1,350.00 for June's rent;
- \$1,500.00 for July and August use and occupancy.

If the tenant vacates the rental unit, the landlord will incur rental losses for September and October, 2023. The landlord withdraws the claim for the water bill.

The landlord's witness (SB) is also a daughter of the landlord, who testified that a new tenancy agreement started on September 1, 2018 for rent in the amount of \$1,350.00. It was agreed upon by text message.

The witness was living at home with her father and dealt with the tenancy after another sister got married. The witness collected rent after April, 2021.

Originally, the upper level of the home was rented to the tenant (DS). In August or July, 2021 the tenant asked for the lower level to be rented to another person (DW), but that tenant had no access to the upper unit.

In June or July, 2018 the witness' sister inspected and found that 4 extra people were living in the home without the landlord's knowledge. The witness' sister spoke to the tenant and agreed to increase rent by \$150.00.

The tenant (DS) testified that if the tenant had not been charged extra, the tenant would have had more than enough money to pay the rent in full, but fell behind in February, 2019 due to paying extra to the landlord. The tenant did not realize that it was an illegal rent increase until reading about rental agreement and laws, and was renting space that the landlord was charging the tenant for, and the tenant should be compensated for that as well.

The tenant paid the increase for the last 5 years, being a new renter. The tenant was previously a home owner or living in housing provided by the tenant's employer, then discovered his rights.

The second tenant (DW) testified that when her tenancy started, she was a friend of the other tenant, who said that he had extra space in his home. The landlord asked to meet the tenant with the landlord's daughter (SB) who provided a tenancy agreement.

The rental unit that the second tenant resides in is not self-contained. The kitchen is not usable because the smoke detector is directly above the stove which sounds through the house when cooking. It was not meant to be a self-contained suite, is more like an in-law suite, and the tenant uses the kitchen in the upper suite.

The landlord did not show the rental unit to the tenant prior to signing a tenancy agreement and did not complete a walk-through at the beginning of the tenancy.

Both tenancy agreements are for the same house, and neither indicate that they are for an upper level or a lower level. The tenant can't get mail there, and had to pay for a Canada Post box. Heat is only controlled by the upper level.

The tenant has never heard from the landlord about the house being shared, although it is shared.

SUBMISSIONS OF THE LANDLORD'S AGENT:

None

SUBMISSIONS OF THE TENANTS:

If the tenants were not acquaintances, sharing a kitchen would be a great inconvenience. The tenant (DW) has only used the kitchen in the lower level once, and it was a shared space situation. If that wasn't an option, the tenant (DW) would not have moved in.

Analysis

Firstly, I advised the landlord's agent during the hearing that a landlord should never refuse to accept rent. However, where a landlord accepts rent after the effective date of a Notice to end a tenancy, the landlord should give the tenant a receipt or some other written acknowledgement that the rent is being accepted for use and occupancy only and does not serve to reinstate the tenancy.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and I find that it is in the approved form and contains information required by the *Act*.

However, in this case, the tenant also disputes the rent increase. The landlord's position is that the increase was a result of a new tenancy agreement made between the landlord and the tenant by text message. I have reviewed the text messages provided by the landlord for this hearing, none of which are dated. I see that the landlord indicated that the rent would be increased to \$1,350.00, and the tenant thanked the landlord.

The law sets out that a tenancy agreement must contain the standard terms:

1 (1) The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the *Residential Tenancy Act* or a regulation made under that Act, or any standard term. If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.

(2) Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable.

In this case, the text messages change the amount of rent, but is not initialed by the landlord or the tenant, and is therefore not enforceable. The *Act* also states that a landlord may only increase the rent by giving the tenant a Notice of Rent Increase which may only increase the rent by the amount permitted by the regulations, and must be served to the tenant not less than 3 months prior to the increase taking effect. Because the rent was increased by \$150.00 per month without serving a Notice of Rent Increase, I find that the tenant has over paid rent by that amount since September, 2018, and rent remains at \$1,200.00 per month until it is increased in accordance with the law.

Excluding this month, 5 years of overpayment amounts to \$9,000.00. Therefore, as of the date that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued, the tenant was not in arrears of rent at all, and I cancel it.

I accept the undisputed testimony of the landlord's agent that the tenant (DS) was in arrears for rent the sum of \$150.00 for July, 2023, which I find that the tenant is not

required to pay. The tenant also owes money for August, which I find is \$1,200.00, and \$1,200.00 is owed for September, 2023. Taken from the \$9,000.00 owed to the tenant by the landlord, I find that the tenant is entitled to recover \$6,600.00.

The tenant also seeks monetary compensation from the landlord for renting the lower level, however I accept the undisputed testimony of the landlord's agent that the lower level was always off-limits to the tenant (DS) and was used as landlord's storage until it was rented to the tenant (DW). Therefore, I am not satisfied that the tenant has suffered any loss.

With respect to the landlord's monetary application, the *Residential Tenancy Act* provides for recovery of a filing fee, but not the costs associated with seeking legal counsel, and I dismiss that portion of the landlord's application.

Similarly, the landlord's application for rental losses and unpaid rent are dismissed.

The balance of the landlord's claim is for damages. The law requires a tenant to repair any damage caused by the tenant. Since the tenancy is not ending, I dismiss the landlord's damage claim, with leave to reapply.

Since the landlord has not been successful with the application, the landlord is not entitled to recover the \$100.00 filing fee from the tenants.

With respect to the tenant (DW), who testified that if it wasn't an option to share space with the tenant (DS), she would not have rented. The tenant (DW) has signed a tenancy agreement with the landlord, and should the tenant have any specific concerns with the tenancy, the tenant is at liberty to make such an application. I make no findings of fact or law with respect to the legality of the lower level rental unit.

Having found that the tenant has overpaid rent, I grant a monetary order in favour of the tenant (DS) in the amount of \$6,600.00, and I order that the tenant may reduce rent until that sum is realized, or may file the order in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, the landlord's applications for an order of possession and monetary order for unpaid rent is hereby dismissed without leave to reapply.

The landlord's application for monetary compensation for damages is hereby dismissed with leave to reapply.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 2, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenant (DS) as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$6,600.00, and I order that the tenant be permitted to reduce rent for future months until that sum is realized, or may otherwise recover it.

I further order the landlord to comply with the *Act* by increasing rent only in accordance with the law.

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: September 08, 2023

Residential Tenancy Branch