



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, MNDC, LRE, FF

Introduction

This hearing was scheduled in response to the tenants' application for cancellation of a notice to end tenancy for unpaid rent or utilities / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order suspending or setting conditions on the landlord's right to enter the rental unit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Two previous decisions have been issued in the dispute between these parties: November 3, 2011 (file # 781256) and January 6, 2012 (file # 783953).

Pursuant to a written tenancy agreement the tenancy began on November 1, 2010. The tenancy agreement provides that rent of \$1,400.00 and parking of \$40.00 are both payable in advance on the first day of each month. The total monthly payment is therefore \$1,440.00. A security deposit of \$700.00 was collected.

In the decision dated November 3, 2011, the dispute resolution officer noted that an agreement ("Correction to Arrears") was made between the parties on May 20, 2011, pursuant to which monthly rent would be reduced by \$400.00 to \$1,000.00 (\$1,400.00 - \$400.00) "until all of the deficiencies are fixed." The cost of monthly parking remained unchanged at \$40.00. The total monthly payment therefore became \$1,040.00 (\$1,000.00 + \$40.00).

The Explanation on the "Correction to Arrears" document reads as follows:

Gina promised rent deduction by \$400.00 each month till all of the deficiencies are fixed (broken skylight window / leak when is rain). Balcony has to fixed, major problems in the building (open walls, mold growing.) **[reproduced as written]**

Subsequently, in the decision dated January 6, 2012, the dispute resolution officer noted the tenants' confirmation that "some of the required repairs have been completed, such as repairs to the skylights..." however, other repairs remained outstanding. In the decision, the four broad areas where repairs remained outstanding are identified as the "Deck Floor, Deck Railing, Elevator, Common areas and halls." Following from all of the foregoing, including findings in the decision dated November 3, 2011, in summary, the dispute resolution officer found that the total amount due for rent and parking combined on January 1, 2012 remained \$1,040.00. There is no dispute that this amount was paid in full.

In the decision of January 6, 2012, the dispute resolution officer also found that the tenants may withhold \$25.00 from the next regular payment of monthly rent in consideration of a partial recovery of the filing fee. The amount of rent due on February 1, 2012 was, therefore, \$975.00 (\$1,000.00 - \$25.00). Combined with monthly parking of \$40.00, the total amount due on February 1, 2012 (rent & parking combined) was \$1,015.00 (\$975.00 + \$40.00). There is no dispute that this amount was paid in full.

In the decision of January 6, 2012, the dispute resolution officer further found that a \$60.00 rent increase introduced by the landlord would be effective March 1, 2012. Accordingly, the rent due on March 1, 2012 is \$1,060.00 (\$1,000.00 + \$60.00). This amount continues to reflect the reduction of monthly rent by \$400.00 in consideration of on-going deficiencies. Rent in combination with monthly parking of \$40.00, yields a total amount due on March 1, 2012 of \$1,100.00 (\$1,060.00 + \$40.00). There is no dispute that this amount was paid in full.

However, despite all of the above, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated March 7, 2012. It appears that the notice was served by way of posting on the tenants' door on that same date. The tenants filed an application to dispute the notice on March 13, 2012. A copy of the notice was submitted in evidence. The amount showing as due but unpaid on March 1, 2012 is \$900.00. The agent representing the landlord at this present hearing had no clear and consistent explanation as to how \$900.00 was calculated. She also acknowledged that she was not familiar with the 2 previous decisions issued in this dispute. In summary, the landlord's agent considers that deficiencies have been rectified sufficient to warrant

payment of full monthly rent, and that the tenants owe \$450.00 for each of February and March 2012.

As to progress with repairs in the 4 broad areas of deficiency identified in the decision of January 6, 2012, the tenants testified as follows: i) no further inspection has been done of the deck floor of their unit; ii) no further inspection has been done of the deck railing of their unit; iii) efforts have been made to maintain a reasonable level of cleanliness in the elevator and to keep it free from graffiti and, iv) efforts have also been made to complete repairs in the common areas and halls, although work is still on-going.

In regard to other aspects of the dispute, the tenants seek compensation of \$300.00 for the time, effort and aggravation arising from being required to attend a third hearing.

The tenants also seek an order instructing the landlord to provide proper notice on any occasion when the landlord plans to enter the unit. The tenants testified that proper notice has not consistently been given by the landlord.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony of the parties, I find that the tenants have paid the proper amount due for rent and for parking combined for the months of February and March 2012. Accordingly, the landlord's notice to end tenancy for unpaid rent or utilities is hereby set aside, and the tenancy continues in full force and effect.

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the tenants' claim for compensation in the amount of \$300.00 is hereby dismissed.

Section 29 of the Act speaks to the **Landlord's right to enter rental unit restricted**, and provides in part:

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

I hereby order the landlord to comply with the above statutory provisions.

Section 32 of the Act speaks to the **Landlord and tenant obligations to repair and maintain**, and provides in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the documentary evidence and testimony of the parties, I find that significant progress has now been made in addressing the areas of building deficiency since the time when the \$400.00 rent reduction was agreed to between the parties on May 20, 2011, and since the issuance of the decisions dated November 3, 2011 and January 6, 2012. However, as previously noted, no inspection of the tenants' deck floor or deck railing has been undertaken since these areas were identified as problematic in the decision dated January 6, 2012. Accordingly, I hereby order the landlord to undertake an inspection of these 2 areas by no later than April 30, 2012, and to conclusively confirm that their condition complies with the statutory provisions set out above in section 32 of the Act, as above.

Pending the completion of this inspection and conclusive confirmation, I find that the tenants may withhold \$400.00 from rent due on April 1, 2012, such that payment due on April 1, 2012 is as follows:

Rent: \$1,060.00 & Parking: \$40.00 = Total Payable: \$1,100.00.

Thereafter, I find that effective May 1, 2012, the regular amount of monthly rent will be payable in the amount of \$1,460.00, plus parking of \$40.00, for a total amount due of \$1,500.00 (\$1,460.00 + \$40.00).

In view of the fact that this decision is dated early in April 2012 (after rent for April has already been paid), I find that as the tenants have achieved a measure of success with this application, they may withhold \$50.00 from the regular payment of rent for May 2012 in order to recover the filing fee. In the result, May's rent of \$1,460.00 will be reduced by \$50.00 to \$1,410.00. With the addition of \$40.00 for parking, the total amount due on May 1, 2012 is \$1,450.00 (\$1,410.00 + \$40.00).

The tenants have the option of filing an application in future, seeking a reduction in rent for repairs, services or facilities agreed upon but not provided, in the event that they consider there is sufficient evidence to support such an application.

Conclusion

The notice to end tenancy is hereby set aside, and the tenancy continues uninterrupted.

Both parties are ordered to comply with the respective orders set out above.

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: April 2, 2012.

Residential Tenancy Branch