Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlords: OPC, FF
Tenant: DRI, MNDC, OLC, PSF, AAT, LRE, O, FF

Introduction

This hearing dealt with Applications for Dispute Resolution submitted by both the landlords and the tenant. The landlord sought an order of possession and the tenant sought to dispute an additional rent increase; an order to have the landlord provide services required by law; to restrict the landlords' access to the rental unit; to allow the tenant and his guests to have access to the rental unit, and a monetary order.

The hearing was conducted via teleconference and was attended by both landlords; their agent; and the tenant.

At the outset of the hearing I advised both parties that as the landlords' Application for Dispute Resolution was submitted after the tenant's Application and because it was for a matter unrelated to anything raised in the tenant's Application that I would only hear the tenant's Application and adjourn the landlords' Application to a later date.

However, through the course of the hearing I heard sufficient evidence and testimony to determine that in fact the matters were all related and this decision includes a decision on both Applications submitted. I advised both parties that I would be doing so prior to the end of the hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an order of possession for cause and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 55, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenant is entitled to a monetary order for costs incurred as a result of the tenancy; return of a non-compliant rental increase; for a loss of quiet enjoyment; for an order to provide services or facilities required by law; suspend or set conditions on the landlords' right to access the rental unit; to allow access to the tenant or the tenant's guests and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 29, 30, 32, 42, 67, 70, and 72of the *Act.*

Background and Evidence

The parties agree the tenancy began on June 15, 2012 as a month to month tenancy for the monthly rent of $700.00 due on the 1st of each month with a security deposit of $350.00 paid. The parties also agree that the rent was increased by $50.00, however the parties do not agree on when the rent increase occurred.

The tenant submits that he was advised in April 2013 that the rent would be increased in June 2013. He testified that he has been paying $750.00 since June. The landlords submit they had the conversation with the tenant in September 2013 that the rent would increase in January 2014.

The landlords acknowledge the tenant had agreed to the rent increase but that they did not obtain an agreement in writing from the tenant. Neither party has provided any evidence of the amounts paid by the tenant or received by the landlords for any period during the tenancy with the exception of the April 2014 payment that the landlord issued a receipt for use and occupancy for on April 2, 2014.

The tenant seeks the return of the non-compliant rent increase for the period June 2013 until April 1, 2014 in the amount of $550.00.

The tenant submits that over the course of the last year the landlords have made his occupancy in the rental unit unliveable. The tenant submits in November 2012 he found employment out of the province but maintained the rental unit and stayed there when he would return on his time off.

In February 2013 he decided he wanted to obtain local employment and so he was now staying in the rental unit on a fulltime basis. He states that this was not accepted well by the landlords. The tenant submits the landlords began constantly knocking on his door to deal with minor complaints; to inquiry when he would go back to the work camps; and threatening to raise the rent.

The tenant submits that as well the landlords had ongoing parties and that they had obtained a dog that barked continuously. The tenant goes on to state the landlords had a baby and after there was constant fighting and the female landlord became extremely hostile. He states that over time the hostility became directed at him and his living there.

The tenant submits that as a result of this harassment he spent more and more time away from home. However, he also states that every time he was at home he was harassed some much that he became run down and sick. He states as a result he lost one of his jobs and that he had to quit another one of his jobs.

The landlords submit that they do not understand what has happened with their relationship with the tenant. The male landlord indicated that at the start of the tenancy he and the tenant were friends. The landlords submit that the tenant, as late as

November 2013 was attending family gatherings and barbecues with the landlords – the tenant disputes this testimony. The tenant denies ever getting together with the landlords, socially.

On February 22, 2014 the tenant submits that the female landlord began pounding on the rental unit door when he had a guest over for dinner. He states that they had music on at a low level. He states the female landlord yelled at him for making too much noise because her dad was sick; told him to turn the music down; and to stop smoking in one of the outside areas.

The tenant responded by text messaging the male landlord (copies of the text messages were submitted by both parties). The landlords submit they felt threatened and on the following day they posted a handwritten notice that they wanted the tenant to vacate the rental unit.

The landlords also testified that they realized that the handwritten notice was not sufficient and on February 24, 2014 they posted, to the tenant's door, a 1 Month Notice to End Tenancy for Cause with an effective date of March 31, 2014 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and jeopardize a lawful right or interest of another occupant or the landlord.

The tenant submits that he did not receive the Notice despite stating that he had returned to the rental unit on February 24, 2014 and February 25, 2014. He states the first time he was made aware of it was when the landlords' agent and he spoke on April 2, 2014. The tenant has submitted an email dated April 3, 2014 to the agent that states: "You made mention, that there was a photograph of a eviction form, taped to my door. May I have it, as well as anay information that may be relevant to it. Thank you in advance." [reproduced as written].

The tenant submits that he never got a response until he received the landlords' evidence for this hearing. When discussing this matter in the hearing the landlords' agent had already left the hearing due to failure of his cellphone.

The tenant sent an additional text to the landlord on February 23, 2014 stating that he had re-read the text messages from the previous night and states that he came across as threatening and that both parties could have handled it better. On February 25, 2014 an additional text was sent from the tenant that states he can be out by the 15th.

I note that with the exception of two text messages provided by the landlord and two emails provided by the tenant all email and text messages submitted into evidence by both parties are dated on or after February 22, 2014.

The text messages submitted by the landlord are dated December 12 and December 17. In the December 12 text the landlord states that he has hooked up the washer and informs the tenant that had re-plugged the smoke detector and carbon monoxide monitor back in. The December 17 text is in response to the tenant's request to park in the driveway when the landlords are away. Permission was granted in the landlord's response.

In an email dated November 26, 2013 submitted by the tenant his ex-girlfriend states that she had had a great night too in response to the female landlord's email that indicated that they had had a "great time with you last night". The female landlord also wanted to know if the tenant's ex-girlfriend had tried a marqarita mix.

In the hearing the tenant stated that despite moving most of his belongings out of the rental unit and arranging for movers to move everything else out the day after the hearing he has not been able to find a new place to live because of the circumstances at his rental unit; that he had been unable to stay there and that he had been spending most of his time dealing with and preparing for his Application for Dispute Resolution and this hearing.

The tenant seeks compensation in an amount equivalent to 3 months rent at $750.00 per month for a total of $2,250.00 for the loss of quiet enjoyment resulting from the landlords' harassment and making the rental unit unliveable.

Analysis

To be successful in a claim for compensation for damage or loss the applicant (in the case before the tenant) has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In the tenant's Application he sought a monetary order in the amount of $17,944.20. In the breakdown of his claim the tenant noted that $13,500.00 was for hotel costs to be paid prior to incurring such costs; $450.00 for 90 days storage costs not yet incurred; $200.00 for moving costs not yet incurred; and $885.20 for costs associated with the tenant's Application for Dispute Resolution such as lost wages; gas to collect evidence and attend the Residential Tenancy Branch; certified cheque costs; registered mail, etc.

I noted at the outset of the hearing that as the tenant has not yet incurred the costs for hotels; storage or moving that the portion of his Application seeking compensation for those costs was premature and I would not consider them at this hearing. I therefore dismiss this portion of the tenant's Application with leave to reapply at a future date.

In relation to the costs that the tenant submits he incurred to file his Application, and any costs incurred related to preparation for or attendance at the hearing, including lost wages; gas costs; costs for certified cheques; registered letters; photos; and printer ink, I find these to be costs associated with choices the tenant made in pursuing his claim and I have no authourity under the *Act* to award the tenant with these costs. I dismiss this portion of the tenant's Application without leave to reapply.

Section 41 of the *Act* requires a landlord, when wanting to increase the rent, to provide the tenant with a written notice of the increase at least 3 months in advance of the effective date. Section 42 goes on to state that if a landlord wishes to increase rent in an amount that is higher than the allowable rent increase for the year the landlord must obtain written agreement by the tenant or an order from the Residential Tenancy Branch.

I accept, based on the testimony of both parties, that the landlord did not provide written notice of a rent increase. In addition, a rent increase of $50.00 for rent that had been $700.00 is an increase of 7.1%. This amount is greater than the allowable rent increase for either 2013 or 2014. From the landlords' testimony I accept they did not have a written agreement from the tenant for such an increase. Therefore, I find the tenant is entitled to return of the overage paid that resulted.

As to the amount of the overage, in the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

As such, the party with the burden of proof must provide additional evidence to support his position. In this case, the tenant claims that he has been paying the additional rent increase since June 2013 and the landlords submit that he starting paying the additional amount since January 2014.

As the tenant has provided no additional evidence to support his claim that he has paid the increased amount since June I find the tenant has failed to establish entitlement to compensation dating back to June 2013. I find it has been established that the tenant has paid the increased amount since January 2014 and is therefore entitled to compensation in the amount of $200.00 for the period of January to April 2014.

In relation to the tenant's claim for compensation in the amount of $2,250.00 for the loss of quiet enjoyment because of the landlords' behaviour I find that despite some written submissions by witnesses there is no direct evidence between the landlords and the tenant that there were any problems with the tenancy prior to February 22, 2014.

In fact, the only direct evidence regarding the relationship between the parties prior to February 22, 2014 submitted into evidence by either party were the text messages of

December 12 and 17 and the emails between the female landlord and the tenant's ex-girlfriend. In both of these examples, I find the tone and relationship to be congenial and without any identifiable problems.

In addition, I find the emails between the female landlord and the tenant's girlfriend definitively contradict the tenant's testimony that he did not socialize with the landlords which raises questions as to the reliability of any of the tenant's evidence and testimony. From the evidence before me I find the parties had a friendly relationship up to February 22, 2014.

For these reasons, I dismiss the tenant's claim for any compensation for the loss of quiet enjoyment.

As to the issue of the 1 Month Notice to End Tenancy, I find that the email submitted into evidence by the tenant dated April 3, 2014 to the landlord's agent does not indicate that the tenant did not receive the 1 Month Notice itself. The email only states that the tenant would like a copy of the photograph of the notice attached to the door.

In addition, as I have found that the tenant's testimony and evidence is less than reliable and on a balance of probabilities I find the landlords did serve the tenant with 1 Month Notice by posting in on the door of the rental unit on February 24, 2014.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

a) The tenant or a person permitted on the residential property by the tenant has
    i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
    ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
    i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
    ii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

Section 47(4) of the *Act* allows a tenant to dispute a notice to end tenancy under Section 47 within 10 days after the date the tenant receives the notice. Section 47(5) states that if a tenant does not submit an Application for Dispute Resolution seeking to dispute the notice within 10 days the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the notice and must vacate the rental unit by that date.

As I have found the landlords served the tenant with the 1 Month Notice to End Tenancy on February 24, 2014 by posting it to the rental unit door, I find tenant is deemed to have received the Notice no later than February 27, 2014. Therefore the tenant had until March 10, 2014 to file an Application for Dispute Resolution seeking to cancel the notice.

As the tenant did not file an Application for Dispute Resolution or seek to amend this Application to include contesting the 1 Month Notice by March 10, 2014 I find the tenant is conclusively presumed to have accepted the end of the tenancy.

As I have determined the tenancy has ended, I find that the issues of ordering the landlord to provide services required by law; suspending or set conditions on the landlord's right to enter the rental unit; and allowing access to the rental unit for the tenant or his guests are moot. As such, I make no findings or orders relating to them.

Conclusion

I find the landlords are entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlords are entitled to recover from the tenant, the filing fee of $50.00 for their application as they were successful in their claim.

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **$175.00** comprised of $200.00 rental overage and $25.00 of the $100.00 fee paid by the tenant for this application as he was only partially successful in his claim less the $50.00 filing fee awarded to the landlords above.

This order must be served on the landlords. If the landlords fail to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: May 13, 2014

Residential Tenancy Branch