



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUN VALLEY TROUT PARK INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, CNR, PSF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order regarding a disputed additional rent increase pursuant to section 43; and
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

The tenant PB (the tenant) appeared on behalf of both tenants. The landlord's agent attended. Both parties in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord appeared and did not raise any issues with service of the dispute resolution package. The tenant admits that the tenants received the 10 Day Notice on or about 7 February 2016.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the additional rent increase valid? Are the tenants entitled to an order that the landlord provide services or facilities?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 1 July 2013. Monthly rent of \$950.00 is due on the first. The landlord continues to hold the tenants' security deposit in the amount of \$425.00. There is an written tenancy agreement; however, neither party provided me with a copy.

As at 1 February 2016 the tenants had not paid rent in the amount of \$950.00. The agent testified that he spoke to the tenant DB about the extra occupants who had been residing in the rental unit for the past two months. The agent testified that at some point in the first week of February the tenant DB verbally agreed to pay to the landlord an extra \$250.00 monthly for the extra occupants. The tenant acknowledged that this conversation occurred on or about 4 February 2016.

On 7 February 2016, the landlord issued the 10 Day Notice to the tenants. The agent testified that he served this notice by posting it to the tenants' door on 7 February 2016. The 10 Day Notice set out an effective date of 18 February 2016. The 10 Day Notice set out that the tenants had failed to pay \$1,200.00 in rent that was due 1 February 2016. The agent asked that I amend this notice to \$950.00 of unpaid rent.

The tenant admitted that the tenants did not pay any amount towards February's rent. The tenant admitted that she understood at the time the 10 Day Notice was issued that the tenants were in arrears on rent. The tenant testified that the tenants did not agree with the amount of the arrears set out on the 10 Day Notice.

The agent testified that the tenants have not made any payments towards their rent arrears since the issuance of the 10 Day Notice. The agent testified that he is not aware of any reason that would entitle the tenants to deduct any amount from rent.

The rental unit is heated by both propane and electric heat. The agent testified that propane is not covered under the tenancy agreement. The agent testified that there were no representations made to the tenants that propane was covered by the landlord. The tenant testified that the landlord filled the propane tank in the course of the tenancy. The tenant testified that she has a receipt for this; however, I was not provided with this receipt.

Analysis

Additional Rent Increase

Rent increases are governed by section 43 of the Act. Section 43 of the Act allows a landlord to increase rent by the prescribed amount or by an amount agreed to by the tenant in writing. Pursuant to section 40 of the Act, for the purposes of the Act, a “rent increase” does not include an increase in rent that is for one or more additional occupants and that is authorized under the tenancy agreement.

The landlord raised rent from \$950.00 to \$1,200.00 the increase was for two additional occupants. On the evidence before me, it does not appear that the increase was agreed to in the tenancy agreement, but rather was part of a verbal agreement subsequent to the formation of the tenancy agreement. On this basis, the increase is a “rent increase” within the meaning of the Act and was not agreed to by the tenant in writing. For these reasons the increase is invalid.

The tenants’ application to dispute the additional rent increase is granted. The rent increase cannot be applied.

10 Day Notice

The landlord asked to amend the 10 Day Notice to set out rent owing of \$950.00 and not \$1,200.00. The tenant admitted that at all times, the tenants understood that they were in arrears for rent, but submits that the amount is incorrect.

Subsection 68(2) of the Act allows me to amend a notice given under the Act that does not comply with the Act.

In this case, the landlord established monthly rent as \$1,200.00 on the basis of representations made to it by the tenant DB. This mistake does not go to the substance of the 10 Day Notice, that is, a 10 Day Notice could have still been validly issued for February’s rent on 7 February 2016 as the tenants did not pay any amount towards February’s rent. In addition, the tenants understood at all material times that they owed rent. For these reasons, I am exercising my discretion to amend the 10 Day Notice to the correct amount of outstanding rent.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are various provisions of the Act that permit a tenant to deduct amounts from rent:

- Subsection 19(2) permits a tenant to deduct amounts from rent to recover the excess amounts of a security deposit that did not comply with the Act.
- Subsection 33(7) permits a tenant to deduct amounts from rent for the costs of emergency repairs.
- Subsection 43(5) permits a tenant to deduct the amount of a rent increase which did not comply with the Act from rent.
- Subsection 51(1.1) permits a tenant to deduct one month rent where the landlord has issued a notice to end tenancy pursuant to section 49.
- Subsection 65(1) and subsection 72(2) permit a tenant to deduct rent to recover an amount awarded in an application before this Branch.

In this case, the tenants were permitted to deduct the amount of a rent increase which does not comply with the Act from rent. The tenants were obliged to pay the remainder in the amount of \$950.00. The tenants failed to do so.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The agent testified that the tenants failed to pay rent for February. The tenant admits that the tenants did not pay February's rent.

As the tenants have failed to pay their rent in full when due, I find that the 10 Day Notice issued 7 February 2016 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenants' application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on 20 February 2016, the corrected effective date of the 10 Day Notice.

Subsection 55(1) of the Act sets out that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the Act reads:

In order to be effective, a notice to end 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, and
- (e) when given by a landlord, be in the approved form.

The 10 Day Notice complies with the requirements set out in section 52 of the Act. In accordance with subsection 55(1) of the Act, I issue the landlord an order of possession effective two days from service on the tenants.

Provide Services or Facilities

The tenants have asked for an order that the landlord provide propane as a service under the tenancy agreement.

Pursuant to subsection 27 a landlord may not terminate a service or facility without providing a tenant with notice and compensation if that service or facility was part of the tenancy agreement.

The tenants failed to provide the tenancy agreement in support of their application. This agreement is critical for determining which services and facilities to which the tenants are entitled under the tenancy agreement. The agent testified that the terms of the tenancy agreement do not include provision of propane. The tenants ask me to find that because the landlord filled the propane tank they are admitting a responsibility for providing that service. The agent did not have any knowledge of this occurring. The tenant testified that the tenants have a receipt that showed the landlord paid for this delivery. The tenants did not provide it.

On the basis of this evidence, the tenants have not provided sufficient evidence to show, on a balance of probabilities, that the landlord was obliged to provide propane to the tenants as part of the tenancy agreement. The tenants' application for an order that the landlord provide propane is dismissed.

Conclusion

The tenants' application to dispute the additional rent increase is allowed. The remainder of the tenants' application is dismissed without leave to reapply.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 02, 2016

Residential Tenancy Branch

