Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC; CNC, MNR, MNDC, OLC, LAT, FF

Introduction

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

- an Order of Possession for cause, pursuant to section 55.

This hearing also dealt with tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause, dated July 31, 2017 ("1 Month Notice"), pursuant to section 47;
- a monetary order for the cost of emergency repairs and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- authorization to change the locks to the rental unit, pursuant to section 70;
- authorization to recover the filing fee for her application, pursuant to section 72.

The two landlords and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 91 minutes in order to allow both parties to negotiate a partial settlement of their applications and to provide full submissions regarding the remainder claims.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

At the outset of the hearing, the tenant confirmed that she did not require an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, nor did she require authorization to change the locks to the rental unit. Accordingly, these portions of the tenant's application are dismissed without leave to reapply.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to increase her monetary claim from $11,691.00 to $20,431.00. The tenant filed an amendment form to increase this amount, along with a second monetary order worksheet and additional documentary evidence. The landlords confirmed receipt of the above documents and indicated that they had notice of the tenant's increased claims, so I find no prejudice to them in amending the tenant's monetary claim.

Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession?

Is the tenant entitled to a monetary order for the cost of emergency repairs and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for her application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2012. Monthly rent in the amount of $1,600.00 is payable on the first day of each month. A security deposit of $850.00 and a pet damage deposit of $850.00 were paid by the tenant and the landlords continue to retain this deposit. Multiple written tenancy agreements were signed by both parties. The tenant continues to reside in the rental unit. The rental unit is a two-level house, of which the tenant occupies the main floor and a storage space in the basement. The landlords also use a guest bedroom on the main floor of the house.

The landlords seek an order of possession for cause and the tenant seeks to cancel the 1 Month Notice. The tenant seeks monetary compensation totalling $20,431.00 from the landlords. She also seeks to recover the $100.00 application filing fee.

The tenant seeks a $250.00 reimbursement from the landlords for them using her internet connection during the entire tenancy. The landlords agreed to pay the tenant $250.00 during the hearing. The tenant also sought a $319.90 reimbursement for a hot tub emergency repair, but the tenant agreed to settle this part of her claim if the landlords reimbursed her $150.00, which the landlords agreed to do during the hearing.

The tenant also seeks $6,861.77 for reimbursement of a portion of hydro utilities from January 1, 2012 to October 31, 2017. She said that she has paid hydro utilities for the entire house during this entire tenancy without any contribution from the landlords. She said that the landlords use half the square footage of the house and should be responsible to pay half the hydro utilities as a result. She claimed that because the landlords use a guest bedroom on the main floor of the house as well as the entire basement except for her storage space, they are using heating and increasing the hydro charges, especially when they live there during the summer time. The tenant provided a copy of the hydro utility bills.

The tenant agreed that her first written tenancy agreement explicitly excluded hydro utilities from the rent and indicated that she was responsible to pay for the entire house. The tenant said that she paid for the hydro utilities from the beginning of this tenancy on January 1, 2012 until the present hearing date of November 6, 2017, even though it was “unconscionable” because she needed a place to live. Both parties agreed that the parties’ subsequent written tenancy agreements remain silent on hydro utilities but there is still a section indicating what is included in the monthly rent and hydro utilities are specifically not mentioned there.

During the hearing, the landlords agreed to pay the tenant $500.00 for their hydro utility usage during the entire tenancy. The landlords claimed that because the tenant had already signed the original tenancy agreement explicitly requiring her to pay all hydro utilities in the house, she had been paying for the hydro utilities in her name since the beginning of the tenancy, it was not included in subsequent written tenancy agreements. The landlords stated that they minimally use utilities in the house, as they are only there for a few weeks per year, and otherwise they keep the air vents closed. They claimed that the tenant used the entire basement for her guests, when the landlords were not around, and she even told them in emails that they could not use it because she was using it, so she should be responsible for all hydro utilities in the

entire house. They also indicated that the rent was originally supposed to be $1,750.00 but was reduced to $1,600.00 to account for the tenant's payment of all hydro utilities in the entire house.

The tenant seeks $13,000.00 in stress-related damages from the landlords. She claimed that the landlords caused her anxiety and ruined her reputation as a realtor, by speaking negatively about her to neighbours in the neighbourhood where the rental unit is located. She said that she was told by other people on many occasions that the landlords were spreading negative rumours about her tenancy and the fact that they were evicting her to live in the house on their own. She stated that the landlords failed to pay her back for hydro utilities, the internet, and the hot tub repair, when they had paid for these things in the past. She said that this caused her stress.

The landlords disputed and denied the tenant's claims, indicating that they were dealing with a family death and were mainly out of province for the last year so they had no time to gossip about the tenant and did not do so when they were rarely at the rental unit. They said that they only told neighbours that they were planning to move back into the rental unit because it was their retirement home and people must have misinterpreted this information and told the tenant something different.

Settlement of Some Issues

Pursuant to section 63 of the *Act,* the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of portions of their dispute.

Both parties agreed to the following final and binding settlement of portions of their dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on November 30, 2017, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlords agreed that any notices to end tenancy issued to the tenant to date, are cancelled and of no force or effect;
3. The landlords agreed to pay the tenant $400.00 by way of e-transfer by November 6, 2017;

a. The above amount includes compensation of $150.00 for the January 2017 hot tub emergency repair and $250.00 for internet usage by the landlords throughout the entire tenancy.

I made a decision regarding the remainder of the tenant's monetary application because the parties were unable to reach a settlement on those issues.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the tenant $500.00 of the $6,861.77 claimed for a reimbursement of hydro utilities for the entire tenancy. The landlords agreed to pay $500.00 to the tenant. I find that the tenant agreed to pay the hydro utilities in addition to rent, as per all her written tenancy agreements with the landlords. The tenant signed the first written tenancy agreement and initialled each page prior to moving into the unit, so she had the ability to negotiate the terms of the agreement with the landlords before moving in or to find another place to live. The tenant did not negotiate the terms of the hydro utilities and explicitly agreed to pay for all of them in the entire house. Although the subsequent written tenancy agreements do not explicitly mention hydro utilities, they are not indicated in the section which states what is included in rent. The parties' first written agreement established that the tenant would be paying for all hydro utilities.

The tenant stated that she did not dispute paying the utilities until she began having disagreements with the landlords around May 2017. Notices to end tenancy were served to the tenant in late July and early August 2017, which coincides with the tenant's application filing date on August 10, 2017, when she applied to dispute the 1

Month Notice. The tenant did not approach the landlords throughout this tenancy in order to seek reimbursement until her letter on July 29, 2017, and both parties confirmed their positive relationship until at least May 2017. The tenant did not file an application until August 2017, more than five and a half years after her tenancy began on January 2012, when she had already been paying the hydro utilities, which were in her name, so I find that she waived her rights to recover the additional amount above what the landlords are willing to pay.

I dismiss the tenant's application for $13,000.00 for "stress" damages. The tenant was unable to justify the amount being claimed. She stated that it was difficult to put a number on being stressed out. I find that the tenant did not provide sufficient documentary proof of her claims. She did not provide any medical records, such as doctor's clinical records, medical notes, medication receipts or other such documents to indicate that she suffered any kind of stress or medical conditions as a result of the landlords' actions, that she went to see a doctor, or she took any medications. She said that she lost out on "at least one [real estate] listing" as a result of the landlords ruining her reputation but she did not identify which listing, where it was located or the amount of such listing. I find that the tenant failed parts 1 and 3 of the above test.

As the tenant settled a portion of her application and was unsuccessful in the remainder except for what the landlords agreed to pay, I find that she is not entitled to recover the $100.00 filing fee paid for her application.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlords **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on November 30, 2017. The tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on November 30, 2017. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the tenant's favour in the amount of $900.00. The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Any notices to end tenancy issued by the landlords to the tenant until November 6, 2017, are cancelled and of no force or effect.

The remainder of the tenant's application is dismissed without leave to reapply.

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: November 06, 2017

Residential Tenancy Branch