



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPRM-DR CNR DRI ERP FFT OLC RP

Introduction

This hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (“Act”).

The corporate landlord applied for:

- An Order for Possession for unpaid rent pursuant to section 55;
- A monetary order for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72

The tenant applied for:

- Cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent (the “10 Day Notice”) pursuant to section 46;
- an order regarding a disputed additional rent increase pursuant to section 43;
- an order to the landlord to make repairs and emergency repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The named corporate landlords were represented by their agent KO (the “landlord”).

As both parties were present service of documents was confirmed. The tenant testified that they received the 10 Day Notice of November 5, 2018 on that date. The tenant filed an application for dispute resolution on November 6, 2018 and served their application and evidence on the landlord. The landlord confirmed receipt of the tenant’s materials. The landlord filed their application for dispute resolution on November 14, 2018 and served the application and evidence on the tenant. The tenant confirmed receipt of the landlord’s materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed additional rent has become due and owing and the rental arrear as of the date of the hearing is \$7,001.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as the amount of the monetary amount sought changing as additional rent becomes due is reasonably foreseeable, I amend the landlord’s Application to increase the landlord’s monetary claim from \$3,878.00 to \$7,100.00.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Should an order be made regarding the disputed rent increase?

Should the landlord be ordered to make repairs or emergency repairs to the rental unit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

The parties agreed on the following facts. This tenancy began in August, 2018 when the landlord took over the management of the rental suite. The tenant had been a resident of the suite under a previous tenancy agreement with a different landlord. The tenancy agreement of July 31, 2018 provides that the monthly rent is \$2,082.00 payable

on the first of each month. A security deposit of \$1,041.00 was paid and is held by the landlord.

The tenant paid \$950.00 for rent on July 31, 2018 and made a subsequent payment of \$3,500.00 on September 4, 2018. \$1,041.00 of the \$3,500.00 payment was for the security deposit for this tenancy. The tenant has made no other payments during this tenancy. The landlord issued a 10 Day Notice on November 5, 2018 which states that the arrear was \$3,878.00. The tenant did not make any payment of the rental arrears.

The landlord testified that based on a monthly rent of \$2,082.00 the arrear as of December 13, 2018, the date of the hearing is \$7,100.00.

The tenant testified that they have not made any rent payment since September 4, 2018. The tenant testified that the monthly rent paid to the previous landlord was \$1,900.00. The tenant characterizes the rent under the current tenancy agreement as an illegal rent increase beyond the allowed amount. The tenant said that while they signed the new tenancy agreement they felt they had no choice as the alternative was vacating the suite.

Both parties gave some evidence about requests for repairs to the rental unit and the repairs made.

Analysis

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 or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of the following issues currently under dispute at this time:

1. This tenancy will end at 12:00 p.m. on December 31, 2018, by which time the tenant and any other occupant will have vacated the rental unit.
2. Both parties agree that this tenancy ends by way of this agreement and the 10 Day Notice is cancelled and of no further force or effect.

Both parties testified that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle the issue of the cancellation of the 10 Day Notice.

As this tenancy is ending by way of the settlement agreement, and the parties testified that repairs have been made to the rental unit, I find it unnecessary to make an order for repairs. This portion of the tenant's application is dismissed.

Based on the evidence of the parties I find that the agreement signed by the parties in July, 2018 is a valid tenancy agreement. Prior to this agreement the tenant was in a tenancy with a previous landlord. I find that the new agreement of July, 2018 is not an instance of a rental increase but the parties entering into a new agreement and setting a new monthly rental amount.

The tenant submitted into written evidence the previous fixed term tenancy agreement where the tenant agreed with the previous landlord to a monthly rent of \$1,900.00. The fixed term tenancy ends on July 31, 2018 and the agreement states that it does not become a periodic tenancy at that point but the tenant is at liberty to enter a new agreement with the new property owners. I find that the new tenancy agreement between the parties is not a continuation of the earlier agreement or an instance where the rent was increased contrary to the *Act*.

There was no obligation on the tenant to enter the fixed term tenancy with the previous property owner or the new agreement with the present landlord. Based on the evidence I find that the tenant understood the terms of the agreement as presented on both occasions. I find that the parties entered into a new tenancy agreement on July 31, 2018. The landlord is not bound by the terms of any previous agreement entered between the tenant and previous landlord or other parties. I find that there has been no rent increase in contravention of the *Act* and dismiss this portion of the tenant's application.

I accept the evidence of the landlord that the monthly rent under the tenancy agreement is \$2,082.00. I accept the evidence that the rental arrear as of the date of the hearing is \$7,100.00. Accordingly, I issue a monetary award in the landlord's favour pursuant to section 67 of the *Act*.

As the parties were able to come to a settlement for the main portion of their applications I decline to issue an order for recovery of filing fees.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$1,041.00 in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant fails to vacate the rental unit by 12:00 p.m. on December 31, 2018. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenants do not vacate the premises by 12:00 p.m. on December 31, 2018. 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 landlord's favour in the amount of \$5,960.00 which represents the unpaid rental arrear for this tenancy less the security deposit. The tenant must be served with this Order as soon as possible. Should the tenant 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.

The balance of both applications 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: December 13, 2018

Residential Tenancy Branch