



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, FFT, OPC, OPR, MNRL

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on November 16, 2020 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order in relation to a disputed rent increase - Section 43; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on November 19, 2020 for:

1. An Order of Possession - Section 55; and
2. A Monetary Order for unpaid rent or utilities - Section 67.

Both Parties appeared and were each given full opportunity under oath to be heard, to present evidence and to make submissions. Within minutes of the start of the hearing the Tenant indicated that it was moving out of the unit and the Parties entered into a mutual agreement to end the tenancy. The only matter left to resolve at the hearing is the Landlord’s claim for unpaid rent and the Tenant’s claim disputing a rent increase.

Settlement Agreement

The Parties mutually agree as follows:

1. **The tenancy will end no later than 1:00 p.m. on February 28, 2020; and**

2. These terms comprise the full and final settlement of all aspects of this dispute for both Parties.

Section 63 of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or order. Given the mutual agreement reached during the Hearing, I find that the Parties have settled their dispute over the end of the tenancy as recorded above. IN order to give effect of this agreement I grant the Landlord an order of possession for 1:00 p.m. February 28, 2021.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Background and Evidence

The Tenant states that a written tenancy agreement was signed on April 1, 2020 with the previous owner of the unit. The Tenant states that no security deposit was collected and rent of \$1,100.00 was payable on the first day of each month. The Tenant states that the Landlord did not ask for a security deposit as the Tenants and the previous owner were friends. The Tenant states that it was unable to locate the written agreement until it was uploaded to the Residential Tenancy Branch (the "RTB") as evidence on January 25, 2021 but that it informed the Landlord of the agreement at the time. The Tenant states that it did not provide a copy of the tenancy agreement to the Landlord until February 6, 2021. The Tenant states that the written tenancy agreement only named Tenant BM as the Tenant.

The Landlord states that no written agreement was provided to the Landlord with the purchase and sale of the unit and that the Landlord only has a note on the addendum to the sale and purchase agreement that sets out rent for this unit of \$1,200.00 per month. The Landlord states that it believes the tenancy agreement is a fraudulent document. The Landlord states that it was unable to contact the previous owner to confirm the

owner's signature on the tenancy agreement as it only had two day to do this before the hearing and the Landlord did not have the time to contact the previous owner.

The Landlord states that a few days before it took possession of the unit on October 1, 2020 the Tenant informed the Landlord that rent was \$1,100.00. The Landlord states that the Tenant was told the rent was \$1,200.00 and that if the Tenant was not okay with that amount it could move out of the unit. The Landlord confirms that it did not contact the previous owner to clarify the rent payable. The Landlord states that the Tenant was asked to sign a tenancy agreement. The Landlord states that the Tenant was asked to produce a copy of a written tenancy agreement in November 2020. The Landlord states that the Tenant agreed to pay \$1,200.00 and did so for October and November 2020. The Landlord states that the Tenant then deducted \$200.00 for these months off the December 2020 rent and paid \$900.00 for December 2020 rent. The Landlord states that it understood that the Tenant was making the deduction as the Tenant believed that the rent was \$1,100.00 and that the Landlord did not legally increase the rent to \$1,200.00. The Tenant has paid rent of \$1,100.00 for January and February 2021. The Tenant states that it paid the increased rent of \$1,200.00 until it learned that it was an illegal rent increase and that the Tenant could deduct the overpaid amounts of rent. The Tenant states that the Landlord started asking the Tenant for the payment of a security deposit sometime in November 2020.

Analysis

Rule 3.14 provides that an applicant must serve its evidence to the other party no less than 14 days before the hearing. Rule 3.15 provides that a respondent must serve its evidence to the other part no less than 7 days before the hearing. Whether the Tenant provided its evidence as an applicant or a respondent, the Tenant did not serve its evidence within the time allowed. As a result, I decline to consider the written tenancy agreement as evidence and only consider the Parties oral testimony in relation to the tenancy agreement.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Section 13(1) of the Act provides that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004. Given the Tenant's detailed oral evidence of a written tenancy agreement that I consider holds a ring of truth, considering that the previous owner was obliged to put the tenancy agreement into writing, as the Landlord provided no evidence of having requested a copy of a written tenancy agreement with the sale and purchase agreement, and as the Landlord bears the burden of proof to substantiate its rental claim, I find on a balance of probabilities that the Landlord has not substantiated that the rent was \$1,200.00 when it took over the rental unit and that the monthly rent remained at \$1,100.00. Given the Landlord's evidence that the Tenant was told to pay the extra \$100.00 or move out of the unit, I find that the Landlord did not increase the rent as allowed under the Act, that the additional monthly amount of \$100.00 was an overpayment of rent and that the Tenant had the right to deduct the overpayment from December 2020 rent. For these reasons and as all rents of \$1,100.00 were paid to the end of the tenancy I find that the Landlord is not entitled to unpaid rent and I dismiss this claim.

As the Tenant's claim disputing the rent increase has been successful, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on February 28, 2021. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: February 09, 2021

Residential Tenancy Branch