



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:

MT CNR MNR OLC ERP RP PSF RR O

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This Dispute Resolution Hearing was convened to deal with an Application by the Tenant:

- To be allowed more time to make this application;
- To cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 13, 2008;
- For a monetary order for emergency repairs;
- For an order that the Landlord comply with the Act, make emergency repairs for health or safety reasons, make repairs to the unit and provide services or facilities as required by law; and
- to allow a reduction in rent for repairs, services or facilities agreed upon but not provided.

Both parties gave affirmed evidence and this Application proceeded on its merits.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the Tenant should be allowed to file his application late;
- Whether the 10 day Notice to End Tenancy should be cancelled;

- Whether the Tenant is entitled to a monetary order for cost of emergency repairs, and if so, in what amount;
- Whether the Landlord should be ordered to comply with the Act, make emergency or non-emergency repairs, or provide services or facilities required by law; and
- Whether the Tenant is entitled to rent reduction for repairs, services or facilities agreed upon but not provided.

Preliminary Matter regarding the Tenant's application to be allowed more time to file this application:

The Landlord's evidence was that he served the 10 Day Notice to End Tenancy dated December 13, 2008 on the Tenant by posting it to the door of the rental unit on December 13, 2008. Pursuant to section 90(c) of the Act, a document served in this fashion is deemed to be served 3 days after posting it on the door of the residence. Therefore, the Tenant was deemed to be served with the Notice to End Tenancy on December 16, 2008.

Under section 46 (4) of the Act, a tenant has five days after being served the Notice to dispute the Notice. Therefore the Tenant had to file his Application for Dispute Resolution by December 21, 2008. The Tenant filed his Application on December 17, 2008, and amended his Application on December 19, 2008. Therefore, the Tenant was within the time limit to file his Application and this matter can proceed.

Background and Evidence with respect to the Tenant's application to cancel the Notice to End Tenancy

The parties agree on the following facts:

- The Tenant is in arrears in the amount of \$550.00 for December, 2008 rent, and \$1,150.00 for January, 2009 rent.

Analysis

Section 26(1) of the Act states:

“A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

The Tenant did not pay rent when it was due and does not have a right under this Act to deduct all or a portion of the rent. Therefore, I dismiss the Tenant’s application to cancel the Notice to End Tenancy.

Section 55 (1) of the Act states:

“If a tenant makes an application for dispute resolution to dispute a landlord’s notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- a) the landlord makes an oral request for an order of possession, and
- b) the director dismisses the tenant’s application or upholds the landlord’s notice.”

The Landlord requested an Order of Possession. The Notice to End Tenancy was deemed to have been served on December 16, 2008, and therefore was effective on December 26, 2008. I therefore grant the Landlord an immediate Order of Possession.

Background and evidence with respect to the balance of the Tenant’s application:

Both parties submitted written evidence and both parties agreed that they had received copies of the other’s evidence with the exception that the Landlord did not received samples of the carpet and underlay that the Tenant submitted on January 14, 2008. Some of the evidence was received late. With the consent of the parties, I considered all of the evidence in reaching my decision, with the exception of the sample of carpet and underlay.

Tenant's testimony:

The Tenant testified that he and his family were ill because of mould and mildew in the carpets of the rental unit. He stated that the Landlord gave his permission for the Tenant to make renovations to the rental unit by tearing out the carpets and painting the floors. The Tenant requested compensation for the cost of removing the carpets in the amount of \$2,000.00. Alternatively, the Tenant requested rent reduction/abatement for his labour and materials used in removing the mouldy carpet.

Landlord's testimony:

The Landlord denied that he had given the Tenant permission to remove the carpeting, but had given the Tenant permission to have the carpets shampooed at the Landlord's expense. The Landlord testified that he has seen no evidence of mould in the carpets. The Landlord testified that the Tenant never told him that he was concerned about mould in the rental unit, and that he was unaware that the Tenant had any concerns about mould until he was served with the Tenant's application. Furthermore, the Landlord stated that in removing the carpet, the Tenant has cost the Landlord money to replace the carpeting.

Analysis:

The Tenant did not provide any calculations, receipts or other documentation to support his claim of \$2,000.00 for costs of emergency repairs. The Tenant provided into evidence 24 photographs, including 16 photographs of what is said to be the floor of the rental unit. These pictures were taken after the carpet had been removed. Three of the photographs were taken when the underlay was still present. The remaining 13 pictures were taken when the underlay had been removed. There are stains on the underlay and on the concrete floor, but I can not determine from the photographs that any of the stains are mould or mildew. The Tenant did not provide sufficient, if any, evidence that there was mould or mildew in the carpet. The Tenant did not provide any evidence to support his claim that his family was ill because of mould or mildew in the rental unit.

Section 33 of the Act states, in part:

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- a) emergency repairs are needed;
- b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact from emergency repairs;
- c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant:

- (a) claims reimbursement for those amounts from the landlord, and
- b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

The Tenant has not proven that there were emergency repairs needed under section 33(3)(a) and I dismiss the Tenant's application for a monetary order for cost of emergency repairs.

Regarding the Tenant's application for an order that the Landlord comply with the Act, make emergency or non-emergency repairs, or provide services or facilities required by law, this portion of the Tenant's application is dismissed. I have found that the Tenant has not proven that there were emergency repairs needed. Furthermore, the Landlord has been granted an Order of Possession and therefore this part of the application is moot.

Regarding the Tenant's application for a reduction or abatement in rent for repairs, services or facilities the Landlord agreed to provide but did not provide, I dismiss this

portion of the Tenant's application. It is the applicant's responsibility to prove his claim. There was no evidence given orally or in writing that the Landlord agreed to do repairs, or provide services or facilities that the Landlord did not provide.

The Tenant has not been successful in this application and therefore I dismiss his application to recover the filing fee for this application from the Landlord.

Conclusion

Under section 55 of the Act, and based on the above facts, the Landlord is entitled to an Order of Possession and I hereby issue the order. The Tenant will have two days from the date of service of the order to vacate the premises. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

January 21, 2009
