



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *CNR, MT, MNDC, RP, FF.*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for an order to allow the tenant more time to dispute the notice to end tenancy pursuant to Section 66 and an order to cancel the notice to end tenancy pursuant to Section 46. The tenant also applied for compensation for loss under the Act pursuant to Section 67, for repairs to be made to the rental unit pursuant to Section 32, and to recover the filing fee, pursuant to Section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

The notice to end tenancy was served on the tenant on January 13, 2009 and the tenant applied for dispute resolution within five days of receiving it. Hence, the application for more time to dispute the notice is unnecessary and therefore this portion of the tenant's application is dismissed.

Issues to be decided

Was the tenant served with a valid notice to end tenancy? Is the tenant entitled to compensation for loss under the Act?

Background and Evidence

Based on the sworn testimony of both parties, the facts are as follows:

The tenancy started on Jun15, 2008 for a fixed term of one year. Rent was set at \$1000.00 payable in advance by the third day of each month. The rental unit is situated on a property that houses another rental unit (tenant 2) and a farm.

Due to the extreme cold and heavy snow fall during the winter of 2008, on December 20, 2008, the water pipes froze and there was no water available in the rental suite.

The tenant confirmed that the tenant did not make contact with the landlord but wrote a letter to the landlord, on December 26, 2008. The landlord stated that tenant 2 made contact with the landlord on December 20, 2008 and since water was available on the farm and the tenant did not contact the landlord, the landlord was not aware that the tenant was without water until the landlord received a letter from the tenant dated December 26, 2008.

The landlord acted immediately on December 20, 2008 to restore the water supply to tenant 2 by having water delivered to the property. The landlord also made arrangements for a plumber to fix the problem and acted on the plumber's advice to heat the well house as the pipes were frozen, but still intact. However, on December 23, 2008, a pipe in the well house burst and since the landlord was out of town when tenant 2 contacted him, the landlord gave tenant 2 permission to contact the plumber directly. The plumber came out, but could not fix the problem as he was unable to locate the water pipes due to the quantity of snow on the ground.

On December 29, 2008, the landlord attempted to contact the City Hall for site plans regarding the location of the water pipes. The City Hall was closed for the holiday season and the landlord implemented the suggestion of the plumber to run an over ground garden hose which would carry water from the pump house to the rental units. The landlord stated that this action restored a trickle of water to the suites, which improved to allow normal activities by January 03, 2009. The plumber returned on January 05, 2009 and full service was restored on January 06, 2009.

In the letter dated December 26, 2008 the tenant and tenant 2 voiced their concerns and the landlord agreed to compensate them for the inconvenience they had endured. The landlord left a message for the tenant. On December 28, 2008, the tenant's spouse returned the landlord's call and asked for permission to break the lease without penalty. The landlord agreed to allow the tenant to break the lease and also agreed to return the security deposit.

The landlord compensated tenant 2 by waiving one half of the rent for January. The tenant refused compensation and advised the landlord of the tenant's intentions to apply for dispute resolution.

On January 11, 2009 the tenant wrote a letter to the landlord asking for compensation in the amount of \$4779.83 for inconvenience endured from the water supply being unavailable from December 20, 2008 to January 06, 2009 and for rent reduction due to repairs that were not completed by the landlord. The tenant stated that the roof leaked in September 2008, and the landlord addressed the issue by using a tarpaulin to stop the leak. The landlord stated that the tarpaulin stopped the leak successfully and the roof will be fixed permanently, once the weather is suitable. The tenant stated that the landlord promised the tenant that blinds will be installed and the landlord did so but omitted to install four blinds. The landlord stated that the tenant did not bring this to the landlord's attention. The tenant stated that there was a leak in the basement and the landlord attempted to fix it himself without success.

The tenant did not pay rent for January and the landlord issued the notice to end tenancy on January 13, 2009. The tenant has also not paid rent for February 2009.

Analysis

Pursuant to Section 26 of the *Residential Tenancy Act*, 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. The tenant did not pay rent for January or February 2009 and hence has contravened this section of the Act. Therefore the notice is upheld. During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the 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.

The tenant has applied for an order for repairs to the rental unit. Since the tenancy will end, it is no longer necessary to address this portion of the tenant's application.

The tenant has applied for a rent reduction for repairs. I find that the landlord addressed the tenant's request to fix the roof and install the blinds. I find that the tenant has not proven the tenant's case for a reduction in rent. The tenant has also applied for compensation for the inconvenience endured during the time that the water supply was not available. I find that the tenant was without this essential service for 18 days and hence is entitled to a reduction in rent for January by an amount which is the equivalent of 18 days of rent. The tenant must pay rent in the amount of \$419.35 for January and full rent for February. The tenant must also bear the cost of filing this application.

Conclusion

I hereby issue an order of possession in favor of the landlord effective two days after service on the tenant. 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.

Dated February 24, 2009.

Dispute Resolution Officer