



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, CNR, ERP, RP, RR, OLC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities as well as to recover the filing fee for this proceeding. The Tenants applied to cancel a Notice to End Tenancy for unpaid rent, for an order for emergency repairs and general repairs, for an order that the Landlord comply with the Act, an order permitting the Tenants to deduct the cost of repairs, services or facilities from rent and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and if so, how much?
3. Are repairs required to the rental unit?
4. Are the Tenants entitled to deduct the cost of repairs from rent?

Background and Evidence

This tenancy started on January 1, 2008. Rent is \$1,375.00 per month payable on the 1st day of each month. The Landlord said the Tenants did not pay their rent for February, 2009 when it was due and as a result, he served them in person and by registered mail on February 11, 2009 with a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities dated February 11, 2009. The Landlord claims the Tenants have not paid anything since they were served with the Notice and are now in arrears of rent for March, 2009.

The Tenants admit they withheld their rent payments for February and March, 2009. They claim, however, that they were justified in doing so because the Landlord has failed to make required repairs to the rental unit. In particular, the Tenants claim that it wasn't until after they signed the tenancy agreement and moved in that they discovered the rental unit (allegedly) had previously been used as a grow op. The Tenants said the Landlord promised to do some repairs at the beginning of the tenancy such as removing mold from a bathroom, fixing a basement door that had been kicked in and removing a

substantial amount of garbage from the back yard. The Tenants claim the basement door was repaired approximately 7 months later but the Landlord has not done anything else. The Tenants claim there is now a leak in the roof that they brought to the Landlord's attention on a number of occasions, but he failed to do anything about it. The Tenants claim there are also mice and rats in the rental unit. The Tenants provided photographs in support of their claim that many repairs are needed and claimed they could not get social assistance for shelter until the repairs were made.

The Landlord admits that repairs are required but argued that the Tenants exaggerated the extent of them.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the amount set out on the Notice or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit at that time.

The Tenants applied to set aside the notice on the grounds that repairs were necessary. The only time(s) a Tenant is permitted by the Act to withhold rent is: (1) if the Tenant **already** has a monetary order issued by the Residential Tenancy Branch authorizing him to deduct the amount from rent; or (2) the Tenant has complied with the steps to notify the Landlord about the need for emergency repairs (as set out in s. 33 of the Act) and has paid to have those repairs done. In this case, I find that the Tenants did not have an order authorizing them to withhold rent and did not pay to have repairs done.

Therefore, although the Tenants applied to cancel the Notice within the 5 day time limit under the Act, I find that there are no grounds for setting the Notice aside because there are rent arrears for February, 2009 that remain unpaid and the Tenants did not have a reason under the Act to withhold their rent. Consequently, I find pursuant to s. 55(2)(a) of the Act that the Landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on April 4, 2009. I also find that the Landlord is entitled to recover rent arrears for February and March, 2009 in the amount of **\$2,750.00** as well as the **\$50.00** filing fee for this proceeding.

Although there is undisputed evidence that the rental unit needs repairs, it is not necessary to make a repair order because the tenancy is ending. Consequently, the Tenants' applications in this proceeding are dismissed. The Tenants are at liberty, however, to make a further application for compensation based on the same alleged facts.

Conclusion

The An Order of Possession to take effect at 1:00 p.m. on April 4, 2009 and a Monetary Order in the amount of **\$2,800.00** have been issued to the Landlord and a copy of the Orders must be served on the Tenants. The Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.