



Dispute Resolution Services

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

Decision

Dispute Codes: CNR, MNDC, ERP, RP

Introduction

This hearing dealt with an application from the tenant for an order cancelling the notice to end tenancy, for a monetary order as compensation for damage or loss, an order requiring the landlord to make repairs to the unit, including those deemed to be emergency repairs. The tenant participated in the hearing and gave affirmed testimony. Despite being served in person on March 16, 2009 with the application for dispute resolution and notice of hearing, the landlord did not appear.

Issues to be Decided

- Whether the tenant is entitled to cancellation of the notice to end tenancy
- Whether the tenant is entitled to other orders, as above

Background and Evidence

There is no written residential tenancy agreement in evidence for this month-to-month tenancy which began on or around February 29, 2008. Rent in the amount of \$750.00 is payable in advance on the first day of each month, and a security deposit of \$375.00 was collected at the start of tenancy.

The tenant failed to pay the full amount of rent due on March 1, 2009. Specifically, she paid only \$300.00 and stated that she entered into a verbal agreement with the landlord for payment of the balance of \$450.00 later in the month.

The landlord issued a notice to end tenancy for unpaid rent dated March 12, 2009. Subsequently, the tenant paid the balance of March rent in the amount of \$450.00 on

March 24, 2009. Later, on March 25, 2009 the tenant made early payment of rent due on April 1, 2009 in the full amount of \$750.00.

The tenant submitted into evidence a copy of the notice. The notice used by the landlord is an out-of-date form and includes what are now out-of-date / incorrect references to relevant sections of the Act. Further, the notice has not been fully completed; for example, there is no indication as to how much rent is overdue and on what date full payment of rent was due.

Analysis

Based on the documentary evidence and undisputed testimony of the tenant, I find that the tenant was served with an invalid notice to end tenancy. Nevertheless, the tenant applied to dispute the notice, paid the rent in arrears and is now current in her payment of all rent. In the result, I hereby set aside the landlord's notice to end tenancy with the effect that the tenancy continues in full force and effect.

As for the monetary order and other orders identified in the tenant's application, these are presently withdrawn pending the tenant's submission of a separate application for dispute resolution which is full and complete with relevant details. In such an application the tenant anticipates being able to provide a detailed description of the various repairs she considers are required at the unit, in addition to evidence to support her claim for monetary compensation from the landlord. Following from this, relevant sections of the Act are cited below.

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain** and provides, in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 33 of the Act speaks to **Emergency Repairs** and provides, in part:

33(1) In this section, “**emergency repairs**” means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

Section 67 addresses **Director's orders: compensation for damage or loss**, as follows:

67 Without limiting the general authority in section 62(3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director

may determine the amount of, and order that party to pay, compensation to the other party.

Section 72 of the Act addresses **Director's orders: fees and monetary orders** and provides in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and....

The full text of the relevant legislation, Fact Sheets, forms and other information related to the landlord-tenant relationship are accessible on the website: www.rto.gov.bc.ca/

Conclusion

I hereby set aside the landlord's notice to end tenancy. The tenancy therefore continues in full force and effect.

Other aspects of the tenant's application are presently withdrawn, pending the tenant's completion of a fully detailed application for dispute resolution seeking orders against the landlord for monetary compensation and repairs.

DATE: April 7, 2009

Dispute Resolution Officer