

Dispute Resolution Services

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

Decision

Dispute Codes: MT, CNR, MNDC, RR

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, more time to make the application for that order, a monetary order and an order permitting the tenant to reduce rent for repairs. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Does the landlord have grounds to end the tenancy?

Is the tenant entitled to a monetary order as requested?

Background and Evidence

The tenant testified that in October 2008, the washing machine backed up into her shower stall and flooded her kitchen. The tenant testified that she used up to 6 towels to clean up the water and that the towels were ruined as a result, as were a pair of runners and an area carpet. The tenant further testified that her shower curtain became mouldy as a result of the incident and that mould was now growing in the house, causing her to develop sinusitis and bronchitis for which she is being medicated. The tenant provided a doctor's note indicating that she was diagnosed on January 13 with sinusitis and bronchitis and had been given antibiotics on that date and on February 17.

The parties agreed that on or about February 13 the tenant was served with a 10-day notice to end tenancy for unpaid rent. The landlord claimed that the tenant had failed to pay \$150.00 of her rent in October. The tenant testified that she had deliberately withheld \$190.00 of her rent in October because of repairs that needed to be addressed in the rental unit. The tenant did not apply to dispute the notice to end tenancy until February 25, some 11 days after the notice had been received.

Analysis

With respect to the tenant's application to dispute the notice to end tenancy, section 66(3) of the Act provides that I am not able to extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice. Although the notice to end tenancy states that it is effective February 8, because the tenant did not receive it until February 13, section 53 of the Act operates to change the effective date to 10 days from February 13. I find that I am unable to grant the tenant an extension of time to make an application to dispute the notice to end tenancy and deny her application to dispute the notice.

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, 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.

As for the monetary claim, the tenant is obligated to prove both the liability for and the quantum of her loss. The tenant failed to provide any evidence as to the value of the items she claims to have lost and further failed to prove that the landlord was responsible for the washing machine malfunction. I find that the tenant has failed to prove her claim on the balance of probabilities and I deny the claim.

As the tenancy is ending, it is unnecessary to address the tenant's claim for an order that her rent be reduced and that claim is denied.

Conclusion

The tenant's claim is dismissed in its entirety. The landlord is granted an order of possession.

Dated April 20, 2009.