

Dispute Codes:

CNR RP LRE OLC PSP RP RR MNDC

Introduction

This is the Tenants' application to cancel a Notice to End Tenancy for Unpaid Rent; for a monetary order for compensation for damages; for orders that the Landlord comply with the Act, make repairs to the rental unit, provide services or facilities required by law; to suspend or set conditions on the Landlord's right to enter the rental unit; and to allow the Tenant to reduce rent.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Should the Notice to End Tenancy issued September 11, 2009, be cancelled?
- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Should the Landlord be ordered to comply with the Act, make repairs, and provide services or facilities?
- Should conditions be set on the Landlord's right to enter the rental unit?
- Is the Tenant entitled to a rent reduction?

Background and Evidence

At the onset of the Hearing, the Tenant testified that he was in arrears of rent. He stated that he has been behind in the past, but the Landlord had always accepted late rent. The Tenant testified that the Landlord's father has been collecting the rent from the Tenant for the past year. The Landlord's father usually comes to pick up the rent on the 4th or 5th of each month. Therefore, the Tenant submits, there was an agreement that rent was not due until the 4th of the month. The Landlord testified that he had issued Notices to End Tenancy for Unpaid Rent previously, but the Tenant always paid within the 5 days allowed under the Act.

The Tenant testified that he had paid a portion of September's rent in advance, and had the remainder of September's rent available for payment, but was waiting for the outcome of today's Hearing before paying the rent, because of his monetary claim.

The Tenant stated that he had the rent arrears for September and all but \$200.00 of October's rent and offered to pay the Landlord immediately, if the Landlord would agree to cancel the Notice to End Tenancy. The Landlord declined and asked for an Order of Possession.

The rental unit is a three bedroom house, of approximately 900 square feet, on ½ acre of land. Monthly rent is \$1,000.00. The three bedrooms are approximately 270 square feet in total. The Tenant testified that he has lived in the rental unit for approximately three years. The Tenant submitted that, for the past two years, he has been unable to heat the bedrooms and the bathroom because of faulty insulation in the attic. When the Tenant moved into the rental unit, there were racoons living in the attic and the wooden soffits were rotting. The Tenant testified that he advised the Landlord, who replaced the insulation, but did not fix the soffits. The racoons came back in and quickly destroyed the insulation again. The Tenant advised the Landlord, but he has not fixed the problem. As a result, there is little or no insulation in the attic. The Landlord stated that there was no point in replacing the insulation in the attic until the soffits were repaired. The Landlord submitted that the Tenant had offered to repair the soffits, and therefore it was the Tenant's responsibility to do so.

The Tenant testified that there are rats living in the garage and the laundry room, and squirrels and racoons in the attic. He submitted that the Landlord is aware of the squirrels, because he heard them while he was at the Tenant's home (2 months after he moved in and 2 or 3 times last summer). The Tenant stated he is afraid that the animals might chew through the wiring and this is a fire hazard. The Landlord stated that the Tenant keeps pigeons in the yard, and they attract rats and racoons. Furthermore, the Landlord testified that the yard is really untidy and he has had received complaints from the neighbours.

The Tenant testified that the natural gas furnace is old, circa 1970s, and the Landlord's father said that he would put 220 volt electric baseboards in the bedroom and re-insulate the attic, so that the Tenant could use the bedrooms in the winter, but this has

not been done. The Tenant testified that he has not been able to use the bedrooms in the winter time for two years due to the lack of heat.

The Tenant testified that last winter, the patio cover caved in, due to heavy snow. The Tenant advised the Landlord, but it has not been repaired.

The Tenant testified that two months ago, the Landlord's father came to the rental unit without due notice, and showed the property to two other people. The Tenant testified that the Landlord's father asked the two people if they were interested in renting the property. The Landlord denied knowing anything about this visit.

The Tenant testified that the Landlord's father walks into the rental property at all times of day without due notice. The Tenant stated that he feels this is an invasion of his privacy.

The Tenant testified that he pays his rent in cash and was not given receipts, although he asked for them. The Landlord stated that he had requested post dated cheques for rent, but that the Tenant did not supply them.

When questioned, the Landlord stated that he has not done an inspection of the house for years.

Analysis

The Landlord provided late evidence (after the Hearing), which has not been considered.

The Landlord gave testimony to suggest that he believes he has a monetary claim for damages. The Landlord has not filed an Application with respect to damages. This matter was convened to hear the Tenant's Application only.

The Tenant admitted that he is in arrears for September and October. Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of the rent. In this case, the Tenant did not have a previous order from the Director to deduct all or a portion of the

rent. Neither did the Tenant have a right to deduct a portion of the rent for emergency repairs under Section 33 (5) and (7) of the Act. Section 33 of the Act states:

Emergency repairs

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.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(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 for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(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.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Even if I were to accept that there was an oral agreement that the rent was not due until the 4th or the 5th of the month, which was disputed by the Landlord, the Notice to End Tenancy was issued on the 11th of the month, at which time all of the rent had not been paid. Therefore, the Tenant's application to cancel the Notice to End tenancy is dismissed. Section 55 (1) of the Act states:

Order of possession for the landlord

55 (1) 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, and I make that order effective **2 days** after service of the Order on the Tenant.

As the tenancy has ended, I dismiss the Tenant's application for Orders that the Landlord comply with the Act, make repairs to the rental property, provide services as

required by law, and setting conditions on the Landlord's right to enter the rental unit. I also dismiss the Tenant's application for a rent reduction.

With respect to the Tenant's application for a monetary order for compensation for damage or loss, I find that the Tenant has proven this portion of his claim. I find the Landlord has not complied with Section 32 of the Act, which states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. The Landlord stated that he has not inspected the rental unit for years. Furthermore, the Landlord submitted that he felt the Tenant was responsible for fixing the soffits. Clearly, the Landlord was aware of the damage to the property and did nothing to repair it. I accept the Tenant's undisputed testimony that the Landlord's father collected and accepted rent payments from the Tenant, and find that the Landlord's father was therefore an agent of the Landlord. The Landlord's father was aware of the lack of heat in the bedrooms. I accept the Tenant's testimony that, as a result of the Landlord's non-compliance with the Act, the Tenant has been without use of his three bedrooms during the cold weather for 2 years. The bedrooms take up approximately 1/3rd of the square footage of the rental unit. I allow the Tenant's claim, in the amount of \$3,333.30, calculated as follows:

\$1,000.00 per month/ 3 (portion of house unuseable) = \$333.33

For November to March (5 months) = \$1,666.65

For 2 years = \$3,333.30

Conclusion

I hereby grant the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby grant the Tenant a Monetary Order against the Landlord in the amount of \$3,333.30. This Order must be served on the Landlord and may be filed in the

Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 8, 2009.
