



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNR

MNDC

RP

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated September 9, 2009 and posted on the tenant's door with effective of September 22, 2009. The tenant's application also requested a monetary order in reimbursement for towing costs and an order that the landlord complete repairs.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Unpaid Rent should be cancelled. The questions to be answered include:
 - Did the tenant violate the Act by failing to pay rent when rent was due?
 - Did the tenant pay the outstanding rent within five days of receiving the Notice deemed served on September 12, 2009?

- Did the tenant have a valid reason under the Act not to pay the rental amount in full?
- Is the tenant is entitled to monetary compensation under section 67 of the *Act* for damages or loss? This determination is dependant upon answers to the following questions:
 - a) that the loss was caused by the landlord's violation of the Act or agreement and
 - b) a verification of the actual amount
- Is the tenant entitled to an order compelling the landlord to complete repairs?

The burden of proof is on the landlord/respondent to justify the reason for the Ten-Day Notice. The remainder of the claims must be proven by the tenant.

Background and Evidence

Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy dated September 9, 2009.

The tenant testified that he was in arrears with rent and received a Ten-Day Notice to End Tenancy for Unpaid Rent. The tenant testified that the Notice should be cancelled because he attempted to pay the arrears within 5 days and the landlord refused payment. The tenant testified that the basis of the landlord's refusal was that no cash would be accepted only cheques or money orders. The tenant objected to this and pointed out that there was nothing in the tenancy agreement requiring that payment must be made by cheque, money order or other method instead of cash.

The tenant was also seeking a monetary order for reimbursement for a towing charge. The basis for this claim, according to the tenant is that the landlord had wrongfully denied the tenant a parking spot to which he was entitled under the agreement as part

of his tenancy and he was therefore forced to park in a designated fire lane from which his car was towed thereby incurring a charge of \$155.00. The tenant testified that he had withheld this amount from his rent. The tenant testified that his application for tenancy, a copy of which was submitted into evidence, indicated that parking for one car was required. Although the tenancy agreement, also in evidence, made no specific mention of a parking spot nor of any charges that would be required for a parking spot, the tenant testified that when he entered the tenancy agreement, he was given a parking sticker and shown a parking spot. The tenant stated that, at the time the place indicated was in a "no parking" zone, but there was a promise by the landlord that it was going to be prepared to enable him to park his car there. The tenant testified that the designated area he was given was never prepared and he was later forbidden to park in that spot. The tenant testified that in December 2008 or early January 2009, he changed vehicles and was issued another parking sticker by the landlord under his new car license plate number. However, the parking sticker still did not show a designated parking spot. The tenant's position is that his tenancy agreement included a parking spot and the landlord wrongfully denied him parking, leading to his illegal parking in the fire lane. The tenant also alleged that the landlord was able to arbitrarily decide what was or was not a fire lane and furthermore that the landlord did not equally enforce the no parking zones with other tenants when they violated the rules.

In regards to the tenant's request for an order for repairs, he stated that this claim was based on verbal promises allegedly made at the time he entered into the tenancy. A note dated September 7, 2009 from the tenant to the landlord indicated needed repairs to the balcony deck, countertops, closet doors, toilet, smoke alarm and that there were some esthetic issues with the curtains, bath tub, and flooring. The tenant also indicated that there were problems with the elevator, unsanitary common areas, nonfunctional laundry machines and compromised fitness facilities. The tenant stated that the counters were since replaced by the landlord but was seeking an order for the other repairs. The tenant stated that the needed repairs were outlined in the move-in inspection report, a copy of which was never given to the tenant.

The landlord agreed that the tenant did not pay \$155.00 of the rent for the month of September 2009, that the Ten-Day Notice was posted and that the tenant came into the office and tried to pay the arrears in cash, although the landlord did not actually see the money. The landlord's position was that they did not have to accept cash as it was contrary to the company policy to do so and all tenants were so advised. The landlord acknowledged that the tenancy agreement did not contain a provision stating that the method of payment prohibited cash, but pointed out that the normal payment method practiced by the tenant in the past was by cheque or money order.

In regards to the tenant's testimony about the monetary compensation for the towing costs, the landlord pointed out that the tenant had knowingly parked in a designated fire lane and that this required towing. The landlord pointed out that there is a term in the tenancy agreement supporting this action and that the landlord did not violate the agreement in any way. The landlord stated that the tenant is solely responsible for the costs of towing under such circumstances. In regards to the tenant's allegation that a free parking spot was included as part of the tenancy, the landlord pointed out that, regardless of what the application stated, the tenancy agreement did not indicate that parking was included anywhere in the agreement. The landlord testified that when a tenant makes arrangements for a parking spot, a specific spot is designated and there is a charge of \$25.00 or \$35.00 per month depending upon where the parking place is located. The landlord was not able to explain why the tenant was issued with a parking sticker and was not present at the time this tenancy was negotiated. The landlord stated that the tenant has not been assigned a spot, has not made any arrangements to have this done and is, in fact, parking in the "Visitors" spot which is also not permitted.

In regards to the repairs promised on the move-in inspection report, the landlord acknowledged that a copy of the report was not given to the tenant as required.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. Given the testimony of the parties, I find that the tenant did not pay the rent when rent was due. However, I find that the tenant made an attempt to pay the outstanding arrears on September 17, 2009 within 5 days of receiving the Notice to End Tenancy for Unpaid Rent and the landlord decline to accept the payment.

I find that the tenant is now entitled to pay the arrears that the landlord declined to accept. The tenant is ordered to pay \$155.00 within the next five days which will expire as of November 9, 2009. The landlord will be issued an Order of Possession effective November 30, 2009 which will not be served on the tenant unless the tenant fails to pay the arrears within the stated deadline. Should the tenant fail to pay the landlord the \$155.00 arrears in full by cheque, money order, or using his debit card on or before Monday, November 9, 2009, then the landlord may serve this Order of Possession on the tenant and it can be enforced. If the tenant brings his account up to date by November 9, 2009, then I order that the tenancy is reinstated and the Order or Possession must be destroyed by the landlord.

In regards to the method of payment for rent, I find that from this point on, the tenancy agreement will now be deemed to contain a clear term that requires payment of rent either by cheque, money order or pre-authorized debit in order to resolve the issue under dispute.

In regards to the tenant's claim for reimbursement for the towing of his car that was parked illegally in a fire lane, I find that the landlord did not violate the Act or agreement in any way and that in fact, the tenant did violate the agreement and municipal bylaws. I find that the tenant is solely responsible for these charges and I dismiss this portion of the application relating to the monetary claim.

On the matter of whether or not the tenant is entitled to free parking, I find that there is no way of proving whether or not parking was included in the tenancy. It is clear that one party, that being the tenant, was under the impression that his tenancy included a parking spot and, in fact, there is some evidence to support this as the landlord issued a parking sticker. On the other hand, by the tenant's own admission, the original property manager refused to prepare the spot where the tenant was supposedly to park. I find that, it is also a fact that the landlord currently does charge for parking. However, this fact does not preclude the possibility that the tenant was led to believe he was permitted to park in the lot. As a suggestion, if this tenancy does continue, the parties could try to arrange a compromise in which a specific parking spot could be made available for the tenant's sole use at a reduced or nominal cost to avoid future problems.

In regards to the tenant's request for repairs, I find that the landlord has taken some positive action in regards to the needed repairs. However, I order that the landlord inspect the unit and take steps to ensure that the landlord complies 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, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. I also order that the landlord immediately supply a copy of the Move-In Inspection Report to the tenant as required under the section 23(5) of the Act and 18(1)(a) of the Regulation. If improvements are promised on this document, I encourage the landlord to honour the commitments made.

In summary:

- I find that if the tenant pays rental arrears of \$155.00 to the landlord within the deadline, then the Ten-Day Notice is cancelled, failing which the landlord may serve and enforce the Order of Possession with effective date of November 30, 2009.

- I find that the tenant must henceforth pay the rent by cheque, money-order, bank draft, automatic debit or with his bank debit card and that this is now a valid and enforceable term in the tenancy agreement between these two parties..
- I dismiss the portion of the tenant's application relating to the request for monetary compensation from the landlord for the towing costs.
- I make no definitive findings on the matter of whether or not free parking was, or should be, included in the tenancy agreement. However I encourage the parties to find some compromise on this issue.
- I order the landlord to comply with the Act by a) inspecting the unit to ensure that section 32 has been met and; b) giving the tenant a copy of the Move-In Inspection Report at the earliest opportunity.

Conclusion

Based on the testimony and evidence discussed above, I hereby issue the contingent Order of Possession in favour of the landlord potentially effective on November 30, 2009. As of November 9, 2009, if the rental arrears are still outstanding, the tenant must be served with the order of possession. Should this occur and 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.

I hereby issue an order that the landlord inspect the unit, comply with section 32 of the Act in regards to repairs, provide a copy of the Move-In Condition Inspection Report to the tenant without delay and review what commitments were made to the tenant for improvements.

November 2009

Date of Decision

Dispute Resolution Officer