Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR, MNDC, RR

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Should the 10 Day Notices to End Tenancy for Unpaid Rent issued on March 6; April 11 and April 12, 2010, be cancelled?

Is the tenant entitled to compensation for damage or loss?

Is the tenant entitled to rent reduction for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The following facts were established during the hearing:

- The tenancy commenced on April 1, 2006 and was a month-to month agreement and on March 8, 2006;

- On March 31, 2010, the parties signed an “agreement” which indicated that the tenant would move out on April 26; that he would pay $650.00 for April rent and that a damage deposit would not be required;
- That at the start of the first tenancy the tenant paid a deposit in the sum of $337.50;
- That on March 1, 2010, the tenant had given the landlord a written notice that he would move on March 31, 2010;
- That the tenant paid his March rent, less the amount of his deposit paid in 2006.

The tenant submitted that the original tenancy agreement ceased at the end of March, 2010, and was replaced by a fixed-term tenancy agreement ending April 26, 2010. The tenant paid the pro-rated rent owed for April.

The landlord and the tenant agree that a 10 Day Notice to End Tenancy for Unpaid Rent was issued on March 6, 2010. This Notice did not include an effective vacancy date.

On April 11, 2010, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent in the sum of $747.00 for rent owed April 1, 2010. On April 12, 2010 the landlord issued another 10 Day Notice to End Tenancy for Unpaid Rent indicating $337.50 owed. The landlord testified that this amount was for March rent arrears and that the amount on the April 11, 2010, Notice was incorrect.

The tenant submitted that there was a verbal agreement that the $337.00 was to have been applied to the balance of rent owed in March and that this is supported by the written agreement signed on March 31, 2010, in which the landlord waived the requirement for a deposit to be paid at the start of the fixed-term tenancy that was to commence on April 1 and end on April 26, 2010. The landlord countered that rent had been paid in full for April, but that the $337.50 balance owed for March formed the basis of the Notice issued on April 12, 2010.

The landlord’s evidence submission included a request for an Order of possession, pursuant to section 55(1); which must then be issued if the Notice is found to be valid and the tenant’s Application is dismissed.

The tenant has claimed compensation in the sum of $400.00; which includes a loss of value of the tenancy in the sum of $325.00 and costs for hearing preparation in the amount of $75.00. No receipts were provided for costs claimed.

The March 31, 2010 agreement signed between the parties included agreement that work would be competed in the rental unit between 10 a.m. and 4 p.m. Monday to Friday. The parties agreed that the landlord was going to complete some painting and restoration to the unit. The tenant had been willing to allow the landlord access to the unit for completion of these repairs.

The tenant submitted photographs in support of his claim that between April 6 and April 11, 2010, the landlord did not clean the rental unit each evening, that refuse was left in the sink and that the floors were not cleaned at the end of the day. The landlord stated that the tenant was to be staying at a neighbouring unit, and that the tenant was out most of the time during the day, which would minimize any inconvenience to the tenant. The parties had agreed to allow the electrician to work in the unit on the weekends.

The work commenced on April 6 and by April 11 the tenant had become upset with the amount of disruption caused by the painting. On April 11, 2010, the tenant approached the landlord to express his concern and the landlord then ceased work in the unit. The tenant submitted photographs showing the state of the rental unit during the time it was being painted. The photographs show ladders, tarps, dirty sink, bathtub and floors.

The tenant is claiming loss of quiet enjoyment as a result of the disruption that occurred between April 6 and 11 and for the failure of the landlord to reinstall all hardware in the unit, 3 shelving units that had been removed and a failure to complete the painting and properly clean the floors and bathroom.

The landlord submitted that the rental unit was dirty when they first entered to paint, that it smelled of cat urine and that there were cat feces in a closet. The landlord stated that by April 11 most of the painting had been completed and that the unit was no less clean than when the work had begun on April 6, 2010.

On April 11, 2010, the landlord offered the tenant the balance of his rent, in the sum of $325.00, if he would immediately move out. The tenant refused this offer.

The tenant made Application for a rent reduction and damage or loss in relation to the same matters. The tenant confirmed his claim for compensation does not exceed the amount included on his Application.

Analysis

I find, based on the balance of probabilities, the agreement signed on March 31, 2010, and the disputed testimony that the original tenancy did end on March 31, 2010; at which point the parties entered into a new, fixed-term tenancy that was to end on April 26, 2010. Therefore, the Notices issued on April 11 and 12, 2010 are of no consequence to the current tenancy and are of no force or effect, as they relate to a previous tenancy between the parties.

I find that Notice issued on March 6, 2010, does not meet the requirements of section 55 of the Act, which require a Notice to include an effective vacancy date. Therefore, the Notice issued on March 6, 2010, was of no force or effect. Further, that Notice relates to the previous tenancy.

In relation to the landlord's request for an Order of possession, I find that the agreement signed on March 31, 2010, was a fixed term tenancy that ended today, April 26, 2010. The landlord is at liberty to submit an Application requesting an Order of possession, based upon the fixed term tenancy. As I have not dismissed the tenant's Application, a Order of possession may not be issued pursuant to section 55(1) of the Act.

In relation to the tenant's claim for loss of quiet enjoyment, I find that the landlord is entitled, as provided by sections 32 and 29 of the Act, to enter a rental unit to complete required repairs and maintenance. Further, the tenant had agreed to allow the landlord access, during reasonable hours and then became upset with the state of the rental unit.

There is no evidence before me of the state of the rental unit on April 6, 2010. However, the photographs submitted by the tenant do indicate that the painting caused some disruption and that the use of the unit was limited due to the presence of equipment. The photographs indicate what I find to be an expected amount of equipment and disruption due to painting; however, I also find that the landlord would be expected to tidy the unit at the end of each day.

The landlord was in the tenant's unit for a period of 6 days. The tenant has claimed a loss of quiet enjoyment and the equivalent of a rent reduction in the sum of $325.00; one half of the rent paid for April, to the 26th inclusive. Residential Tenancy Branch ((RTB) policy suggests that temporary discomfort or inconvenience does not constitute a basis for a claim for loss of quiet enjoyment. I find this standard a reasonable one.

RTB Policy also suggests:

> *It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.*

I find that the landlord failed to ensure that the rental unit was returned to a reasonably clean state at the end of each day while they were painting. I also find that the landlord failed to reinstall the unit hardware and shelving that had been in the unit. As a result I find that the tenant is entitled to nominal damages in the sum of $50.00. I have made this determination in recognition that the landlord did not clean the unit at the end of each day or make an effort to set aside their painting materials, while also taking into account the landlord's testimony in relation to the state of the rental unit at the start of the tenancy. I also base this decision on the short length of time the tenant was inconvenienced and the fact that the tenant was able to continue to use the unit during this time.

In relation to the claim for costs incurred in preparation for this hearing, I find that the tenant must assume this cost. I base this decision on the lack of any verification of the compensation claimed.

Conclusion

The Notices issued by the landlord do not relate to the current fixed-term tenancy and are, therefore, of no force or effect.

The parties have signed an agreement which determines that this tenancy ends today; April 26, 2010. The landlord is at liberty to submit an Application requesting an Order of possession based upon the fixed-term tenancy.

The tenant is entitled to nominal damages in the sum of $50.00 and I grant the tenant a monetary Order in that amount**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

The balance of the tenant's claim for rent reduction, costs and loss is dismissed.

As the tenant's Application for dispute resolution is not dismissed the landlord is not entitled to an Order of possession, pursuant to section 55(1) of the Act. Further, the Notices issued to the tenant related to a previous tenancy.

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: April 27, 2010.

Dispute Resolution Officer