

DECISION

Dispute Codes CNR, MNDC, OLC, ERP, RP, RR, FF

Introduction

This hearing was convened by way of conference call to deal with the tenants' application to cancel a notice to end tenancy for unpaid rent, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order that the landlord comply with the *Act*, regulation or tenancy agreement, for an order that the landlord make repairs to the unit, site or property, for an order that the landlord make emergency repairs for health or safety reasons, for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee from the landlord for the cost of this application. Only one of the tenants attended the hearing, and one of the named landlords attended, being an agent for the owner landlord.

Issues(s) to be Decided

Are the tenants entitled to an order cancelling the notice to end tenancy for unpaid rent?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order that the landlord make repairs to the unit, site or property?

Are the tenants entitled to an order that the landlord make emergency repairs for health or safety reasons?

Are the tenants entitled to an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This tenancy commenced on June 15, 2009 as a fixed term tenancy which expired on June 15, 2010 and then reverted to a month-to-month tenancy. Rent in the amount of \$1,100.00 is payable in advance on the 15th day of each month. The landlord collected a security deposit from the tenant in May, 2009 in the amount of \$550.00.

The tenant testified that she has never been given a copy of the tenancy agreement. The rented unit is in a house that has 2 suites; the tenants have the upstairs and half of the downstairs. The other suite is also rented.

The tenant also testified that her boyfriend had been personally served on May 11 or May 12, 2010 with a notice to end tenancy dated May 11, 2010 which stated that \$1,100.00 that was due on May 1, 2010 had not been paid and had an expected move-out date of May 21, 2010. A copy of that notice to end tenancy was not provided in advance of this hearing. However, the tenant also stated that she has not paid rent for May, June or July, 2010, and that she had withheld rent 3 times prior for lack of repairs promised by the landlord. Each time she withheld the rent a handyman would show up to do the repairs. She stated that squatters had been in the house prior to her taking possession and numerous repairs had been promised by the landlord. She stated that numerous holes in the walls were to be repaired, carpets were to be replaced, 2 doors had been kicked in, new doors were installed improperly and the house floods when it rains, the dead bolts don't line up in the doors which prevent her from locking her doors, the toilets leak, half of the electrical plug-ins don't work, 2 rooms have no heat because the heat ducts are missing, and the unit is growing mould.

The tenant is claiming a monetary order for damaged paintings, her damaged book collection, and damaged hockey memorabilia from the 1980's, all damaged from flooding caused by the improperly installed doors. She stated that four inches of water was on the floor when a huge rain storm occurred in July, 2009. She stated that she cannot get tenants' insurance because she can't lock the door; the dead bolt doesn't line up to the door jam. She further testified that she gave a key to a handyman to do the repairs, but he didn't do the work and didn't come back. She knew he had been there while she wasn't home because the door had been left wide open.

After the flood in July, 2009, a handyman showed up and put her carpets outside to dry, then rolled them up and stored them in an empty suite after about 3 weeks. Then they were put back in her unit on September 23, 2009.

The tenant also testified that the landlord had told her to buy a lawnmower and he would reimburse her for the cost. She also stated that she did a number of improvements herself because they were emergency repairs, and gave all receipts to the landlord prior to receiving the notice to end tenancy. She stated that the landlord's agent told her that anything that the tenants do could be deducted from the rent. The tenants have not been compensated for those repairs.

The tenant is claiming \$5,000.00 in damages, and has provided receipts from Wal-Mart, 2 from The Home Depot, Dollar Giant, Potters Farm & Nursery as well as a receipt for the lawnmower. The tenant was asked to explain each item on each receipt, and the total for all receipts is \$766.65. She stated that the receipt from Potters Farm & Nursery in the amount of \$48.10 was for landscaping and blocks to prevent water from going into the residence under the improperly installed door. The receipt in the amount of \$22.40 from Dollar Giant is for towel and paper products. The receipt from Wal-Mart has a number of painting supplies, as well as other personal items, which totals \$401.07, and the receipts from The Home Depot are for \$65.14 for a saw, bulbs and personal items, and \$29.94 for painting supplies.

The landlord's agent testified that a plumber and an electrician have both been at the unit, but the tenant didn't like the work that they do, and when workers attend she wants them to do other work, and doesn't pay rent. He further testified that the tenant's evidence is in error; that she received a copy of the tenancy agreement but obviously misplaced it. He also stated that rent is due on the 1st of the month, not the 15th. The tenant has not paid rent for May, June or July. He stated that on June 14, 2010 he called the tenant to arrange for repairs to be completed and to ask for rent, but she replied that she wanted to attend the dispute resolution hearing, and did not pay any rent.

The landlord's agent further testified that the tenant does not agree on getting anything done. He stated that he has the receipts that the tenant provided to him for work that she did, but he is not convinced what they are for.

The parties have also testified that two hearings have been held previously; this is the 3rd hearing. The landlord received an Order of Possession for these tenants on November 10, 2009 but did not enforce it, and the tenants paid the rent, thereby reinstating the tenancy.

Analysis

Firstly, dealing with the notice to end tenancy, I am satisfied by the evidence of both parties that the tenants have not paid the rent, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and are further in arrears than when the notice was issued. The tenants have disputed the notice within the time required under the *Residential Tenancy Act*, stating that the notice ought to be cancelled because of emergency repairs completed at the cost of the tenants.

In determining whether or not the notice to end tenancy ought to be cancelled, I refer to the *Residential Tenancy Act* which states that:

26 (1) A tenant must pay rent 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.

The *Act* also sets out the responsibilities of the landlord with respect to repairs:

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.

And further:

32(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.

The *Act* also sets out what is deemed as 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.

Further, the *Act* sets out when the tenant may have emergency repairs repaired:

33 (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.

The *Act* also sets out liability for those emergency repairs on the landlord:

33 (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.

33 (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.

33 (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.

Therefore, the test to be met here is whether or not the repairs were emergency repairs which would allow the tenants, pursuant to Section 33 (7), to deduct the costs from rent due to the landlord. I have reviewed the evidence of the parties, and I cannot find that all of the receipts provided by the tenant were for emergency repairs. Further, the total of those receipts is \$766.65, which is well below the amount of one month of rent. For that reason, the landlord is entitled to an Order of Possession for unpaid rent. Further, the tenants did not pay rent for additional months, and the landlord is therefore entitled to a monetary order for unpaid rent.

With respect to the tenants' monetary claim, I have been through each receipt and I find that the tenants ought to be reimbursed the amount of \$634.45 for repairs made. The landlord is not responsible for the purchase of a trash can, and the other items must be left in the unit as property belonging to the landlord.

With respect to the tenants' application for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, I find that the unit required repairs, however the tenants did some repairs themselves. The parties were also before a Dispute Resolution Officer in November, 2009, and any rent abatement that the tenants would be entitled to up to that date ought to have been applied for then and perhaps they were and were adjudicated upon. But for that reason, I will not be awarding any rent abatement for any rental period prior to November, 2009. The tenant stated that they were getting 70% usage from what they contracted for, and \$1,100.00

@ 30% would be a reduction of \$330.00 per month, or \$2,640.00 up to the end of July, 2010, but I also find that the tenants inhibited productivity of the tradespersons by interfering with the instructions they received from the landlord. Also, the tenants agreed to do some of the work themselves, and therefore, the application that the tenants be permitted to reduce rent for repairs, services or facilities agreed upon but not provided, was partially due to their own actions. For that reason, I find that the tenants are entitled to one half of their claim, or \$165.00 per month, or \$1,320.00 up to the end of July, 2010.

With respect to the tenants' application for damaged items, I find that the tenants should recover from the landlords the sum of \$100.00.

Conclusion

For the reasons set out above, I hereby dismiss the tenants' application to cancel the notice to end tenancy, and I grant the landlord an Order of Possession. The order must be served on the tenants. If the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia for enforcement.

As for the monetary order, I hereby order that the tenants pay to the landlord for outstanding rent in the amount of \$3,300.00. I further order that the rent due be offset for repairs owed to the tenants in the amount of \$634.45, and \$1,320.00 rent abatement, and \$100.00 for damaged items, and I grant the landlord an order under section 67 for the balance due of \$1,245.55. This Order may be filed in the Provincial Court of British Columbia, Small Claims Division and enforced as an order of that Court.

The tenants' application for an order that the landlord comply with the Act, regulation or tenancy agreement is hereby dismissed without leave to reapply.

The tenants' application for an order that the landlord make repairs to the unit, site or property is hereby dismissed without leave to reapply.

The tenants' application for an order that the landlord make emergency repairs for health or safety reasons is hereby dismissed without leave to reapply.

I further order that the tenants leave the following items in or on the rental premises as items belonging to the landlord: the lawnmower, paint and paint supplies, the saw, all light bulbs, the Twistn Reach, the pole, silicone, spray nozzle, brushes, rust paint, stain, smoke alarm, globelight, shovel, rake, broom, and scraper.

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: July 06, 2010.

Dispute Resolution Officer