



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, LAT, LRE, RP, O, FF

Introduction

This hearing was scheduled to deal with the tenant's application to cancel a Notice to End Tenancy for Cause, for authorization to change the locks, for conditions to be set upon the landlord's right to enter the rental unit, for Orders for repairs, other issues and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to submissions of the other party.

I determined that the tenant had served late evidence upon the landlord and Residential Tenancy Branch and I informed the parties that I would not consider the tenant's documentary evidence. Rather, I informed the tenant that he would be provided the opportunity to provide verbal testimony with respect to the landlord's reasons for ending the tenancy.

At the commencement of the hearing I also determined that the tenant had been served with a 10 Day Notice to End Tenancy for Unpaid Rent and the landlord requested an Order of Possession based upon the 10 Day Notice. The tenant explained that he did not dispute the 10 Day Notice as he had this hearing scheduled and was of the belief it would be dealt with during this hearing. The tenant requested and I agreed to amend the tenant's application to include a dispute of the 10 Day Notice.

Issues(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?

2. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
3. Is the tenant authorized to change the locks?
4. Is it necessary to set conditions upon the landlord's right to enter the rental unit?
5. Is it necessary to issue orders against the landlord for repairs?

Background and Evidence

I was provided undisputed evidence as follows. The parties entered into a tenancy agreement set to commence April 15, 2010 for the upper portion of the residential property. Effective August 1, 2010 the parties agreed in writing that the tenants would rent the upper and lower portion of the residential property for a monthly rent of \$1,920.00 due on the 1st day of every month. On October 8, 2010 the landlord issued a 1 Month Notice to End Tenancy for Cause to the tenants and the tenants disputed the 1 Month Notice. On November 2, 2010 the tenants were personally served with a 10 Day Notice to End Tenancy for Unpaid Rent. The 10 Day Notice indicates that the tenants failed to pay \$1,920.00 as of November 1, 2010 and has an effective vacancy date of November 12, 2010.

The landlord submitted that she had a rent cheque for November 2010 but that the tenants' bank would not negotiate the cheque despite several attempts by the landlord up until November 7, 2010. The tenant explained that the funds were not in the bank account as the tenants were setting aside money to make emergency repairs to the stairs leading to the basement and sewage smells in the bathrooms. The landlord stated she has purchased carpet for the basement stairs and the tenant interfered with the landlord's ability to install the carpets on October 3, 2010. The landlord claimed she had not been notified of sewage smells in the bathrooms. Upon enquiry, the tenant confirmed that he has not made emergency repairs or spent any of his own money on emergency repairs.

Included in the landlord's evidence was a copy of the 10 Day Notice issued November 2, 2010 and the tenancy agreement, addendums to the tenancy agreement and revisions to the tenancy agreement.

Analysis

Upon review of the evidence before me, I accept that the tenants were required to pay rent of \$1,920.00 on November 1, 2010 in accordance with their tenancy agreement. Upon receipt of the 10 Day Notice on November 2, 2010 the tenants had five days to pay the outstanding rent to nullify the Notice or make an application to dispute the Notice. In this case, I have accepted that the tenants disputed the 10 Day Notice by way of this amended application.

Where a 10 Day Notice is disputed, the tenant has the onus to show that rent has been paid or that the tenant had the legal right to withhold rent. In this case, the tenant submitted that emergency repairs were required to the rental unit but the tenant acknowledged that the tenants have not spent at least \$1,920.00 on emergency repairs.

Section 33 of the Act provides for emergency repairs. As the tenant was informed during the hearing, several criteria have to be met in order to deduct monies from rent for emergency repairs. In summary, an emergency repair must exist as defined by section 33(1) of the Act. The tenant must show two attempts were made to contact the landlord about the emergency repair and the landlord did not respond within a reasonable time. The tenant must show that he had the emergency repairs made. Then, upon the tenant requesting reimbursement from the landlord and presenting the landlord with an accounting and receipts for the cost of repairs the landlord must reimburse the tenant for the repair costs under section 33(5). Authorization to deduct amounts paid for emergency repairs from rent is provided by section 33(7) of the Act and applies only if the landlord will not reimburse the tenant for the cost of emergency repairs as provided in section 33(5).

Based upon the tenant's testimony I find the tenant did not establish that he has made emergency repairs or incurred costs related to emergency repairs. Therefore, the tenants were not entitled to withhold rent for emergency repairs on November 1, 2010.

I find the 10 Day Notice to be valid and the tenants did not have grounds under the Act to withhold rent payable to the landlord. Accordingly, I find that this tenancy ends on the effective date on the Notice of November 12, 2010. Pursuant to section 55 of the Act, I grant the landlord's oral request for an Order of Possession. The landlord is provided an Order of Possession effective two days after service upon the tenants. The Order of Possession may be enforced in the Supreme Court of British Columbia.

As the tenancy is about to end due to unpaid rent, I do not find it necessary to consider the remainder of the matters identified on the tenant's Application for Dispute Resolution. Accordingly, the tenant is not authorized to change the locks, I do not give any repair orders to the landlord and the landlord remains bound to comply with section 29 of the Act with respect to gaining access to the rental unit.

Conclusion

The tenancy ends November 12, 2010 due to failure to pay rent. The landlord has been provided an Order of Possession effective two days after service upon the tenants.

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: November 10, 2010.

Dispute Resolution Officer