



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, ERP

Introduction

This was an application by the tenant for an order cancelling a 10 day Notice to End Tenancy for unpaid rent and for an order for emergency repairs. The hearing was conducted by conference call. The landlord's representative called in to the conference call at the appointed time. The tenant called in approximately ten minutes late.

Issue(s) to be Decided

Are there grounds to cancel the Notice to End Tenancy for unpaid rent?
Should the landlord be directed to perform emergency repairs?

Background and Evidence

The rental unit is the upper unit in a residential house in Nanaimo. The tenancy began in January, 2009. Monthly rent is \$900.00. The landlord's representative testified that she personally served the female tenant with a 10 day Notice to End Tenancy for unpaid rent on December 7, 2010. The tenant filed an application to dispute the Notice to End Tenancy on December 13, 2010.

At the hearing the tenant acknowledged that she paid only \$450.00 rent for November, 2010 and she has paid No rent for December or January. There is currently \$2,250.00 owing for rent.

The tenant submitted as a reason for the unpaid rent that her husband is in the hospital and: “The house is not good to live in.” At the hearing the tenant complained of a lack of heat in the house and of black mould. The tenant submitted what she said were photographs of the rental unit. The black and white faxed photographs were indecipherable and provided no useful images; they were of no probative value. The tenant claimed that she made requests for repairs to the rental unit. The tenant did not provide evidence of a written request to the landlord for any repair during the tenancy. At the hearing the tenant said she could have provided more evidence if she knew it was necessary.

The landlord provided extensive evidence to show the repairs performed during the tenancy. She denied the tenant’s claim that there was no heat and said that if there was an absence of heat it was because the tenant had not paid the Hydro bill or had not paid for heating oil which were the tenants’ responsibility under the tenancy agreement

Analysis Conclusion

The *Residential Tenancy Act* provides that a tenant must pay the rent when it is due under the tenancy and this is so whether or not the landlord complies with the Act Regulation or tenancy agreement. The only exceptions to this requirement are when the tenant has an order from a Dispute Resolution Officer authorizing the tenant to withhold an amount from rent or when the tenant is entitled to be reimbursed by the landlord for amounts that the tenant has paid for emergency repairs. Neither of these exceptions applies in this case.

Further I do not accept the tenant’s evidence concerning the state of the rental unit or concerning the landlord’s failure to make repairs. I prefer the landlord’s testimony buttressed by documents that show the landlord to have made significant repairs and

improvements to the rental unit to accommodate the tenant and in particular to accommodate the male tenant's disability and use of a wheel chair.

I find that the tenants have not provided evidence of any ground that would justify cancelling the Notice to End Tenancy for unpaid rent. The tenants' application to cancel the Notice to End Tenancy is dismissed without leave to reapply

Section 55 of the *Residential Tenancy Act* provides as follows:

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.

I have dismissed the tenant's application to dispute the landlord's Notice to End Tenancy. The landlord made an oral request for an order of possession at the hearing. Pursuant to section 55 I grant the landlord an order for possession effective two days after service upon the tenants. This order may be registered in the Supreme Court and enforced as an order of that court.

Dated: January 11, 2011.
