



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNR, MT, RP, RR, OPR, MNR, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. The Landlord applied to amend the Landlord's Application for Dispute Resolution to include a claim for unpaid rent from April of 2011. The Tenant did not oppose the application and the Application for Dispute Resolution was amended accordingly.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application for more time to apply to cancel a Notice to End Tenancy, to cancel a Notice to End Tenancy for Unpaid Rent, for an Order requiring the Landlord to make repairs to the rental unit, site, or property, for authorization to reduce the rent, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The Tenant stated that he did not mean to apply for authorization to reduce the rent and that issue has, therefore, been withdrawn from the Tenant's Application for Dispute Resolution. The Tenant has filed his application to dispute the Notice to End Tenancy within the legislated timelines and there is, therefore, no need to consider his application for more time to apply to cancel a Notice to End Tenancy.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence, albeit not within five business days, and it was accepted as evidence for these proceedings.

The Landlord declined the opportunity for an adjournment for the purposes of providing the Landlord with more time to consider the evidence served to him by the Tenant.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution, are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution, are whether the Notice to End Tenancy for Unpaid Rent should be set aside; whether there is a need for an Order requiring the Landlord to make repairs to the rental unit; and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution, pursuant to sections 32, 46(4), and 72 of the *Act*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 1987 and that Tenant is currently required to pay monthly rent of \$727.50 on the fifteenth day of each month. The Landlord and the Tenant agree that the Tenant did not pay any rent for February, March, or April of 2011. The Tenant stated that he has not paid the rent because the Landlord has failed to maintain the residential property in a manner that complies with the *Act*.

The Tenant stated that he paid the last month's rent, in advance, at the start of the tenancy, at which time the rent was \$405.00 per month. He asked that this payment be applied to the outstanding rent. The female Agent for the Landlord stated that the Landlord does not recall if the last month's rent was paid in advance at the start of the tenancy.

As the Landlord did not acknowledge collecting the "last month's rent" at the start of this tenancy; the *Act* does not authorize landlords to collect the "last month's rent" at the start of a tenancy; and the Tenant did not indicate that this issue would be in dispute at these proceedings, I find that it would be inappropriate for me to determine whether this alleged payment should be applied to the rent that was due for February, March, and April of 2011. The Tenant retains the right to file another Application for Dispute Resolution in which he applies to recover any deposits that were made at the start of the tenancy.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of April 10, 2011, was personally served on the Tenant on March 31, 2011. The Notice declared that the Tenant owed \$1,455.00 in rent that was due on March 15, 2011.

Upon being advised that the tenancy was ending on May 15, 2011 the Tenant withdrew his application for repairs to the rental unit, with the exception of his request to have the rental unit tested for asbestos. The Tenant stated that he is familiar with asbestos products and he believes there is asbestos in the tape around the venting ducts and in the flooring in the rental unit.

The male agent for the Landlord stated that his father had the windows replaced in the adjacent suite last summer and there was no mention of problems with asbestos in the residential property. The male agent for the Landlord stated that his father had the furnace in the rental unit replaced approximately twenty years ago and there was no mention of problems with asbestos in the venting systems. The male agent for the Landlord stated that the Tenant did not raise any concerns about asbestos in the rental unit until after he was served with a Notice to End Tenancy. The male agent for the Landlord stated that he has no reason to believe there is asbestos in the rental unit.

The Tenant submitted two samples of material from the rental unit and requested that it be analyzed for asbestos.

Analysis

The undisputed evidence is that the Tenant is required to pay monthly rent of \$727.50 on the fifteenth day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord, whether or not the landlord complies with the *Act*.

As the Tenant acknowledged he has not paid rent for February, March, or April of 2011 and he submitted no evidence to establish that he had a right under the *Act* to withhold the rent that was due pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,182.50 in outstanding rent to the Landlord.

If rent is not paid when it is due, a landlord may end the tenancy by serving notice pursuant to section 46 of the *Act*. The undisputed evidence is that on March 30, 2011 the Tenant was personally served with a Notice to End Tenancy that directed the Tenant to vacate the rental unit by April 10, 2011, pursuant to section 46 of the *Act*. As rent was not paid when it was due and the Landlord served the Tenant with notice pursuant to section 46 of the *Act*, I find that the Landlord had grounds to end this tenancy pursuant to section 46 of the *Act*. I therefore dismiss the Tenant's application to set aside the Notice to End Tenancy and I grant the Landlord's request for an Order of Possession.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

There is a general legal principle that places the burden of proving a fact on the person who is claiming compensation, not on the person who is denying the claim. In these

circumstances, the burden of proving that there is asbestos in the rental unit rests with the Tenant. I find that the Tenant has submitted insufficient evidence to support his suspicion that there is asbestos in the flooring or on tape used on ductwork in the rental unit. I therefore dismiss the Tenant's application for an Order requiring the Landlord to test the rental unit for asbestos. In the event that the Tenant has products from the rental unit tested for asbestos and those tests establish that the asbestos levels in the home do not comply with health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make the unit unsuitable for occupation by a tenant, the Tenant retains the right to file an Application for Dispute Resolution in which he applies to recover reasonable costs of conducting those tests.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Tenant's application has been without merit and I dismiss his application to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective on May 15, 2011 at 1:00 p.m. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$2,232.50, which is comprised of \$2,182.50 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution and I grant the Landlord a monetary Order for this amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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, 2011.

Residential Tenancy Branch