



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDC, RR, FF

Introduction

This Hearing was scheduled to hear the Tenant's application to cancel a Notice to End Tenancy for Unpaid Rent; for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement: for a reduction in rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord.

Both parties gave affirmed testimony at the Hearing.

The Tenant testified that on March 15, 2011, he mailed the Notice of Hearing documents to the Landlord, by registered mail, to the address where the Landlord carries on business. The Tenant provided a receipt and tracking number in evidence.

The Landlord testified that on March 4, 2011, the Notice to End Tenancy issued March 3, 2011, was mailed to the Tenant, by registered mail to the rental unit.

I considered all of the documentary evidence provided by and to both parties with the exception of the following late evidence:

- Tenant's documentary evidence filed on March 30, 2011;
- Landlord's documentary evidence filed on March 30, 2011; and
- Tenant's documentary evidence filed on March 31, 2011.

I invited the parties to give oral testimony with respect to the excluded documentary evidence.

Issues to be decided

- Should the Notice to End Tenancy for Unpaid Rent issued March 3, 2011, be cancelled?
- Should rent be reduced for repairs, services or facilities agreed upon but not provided?
- Is the Tenant entitled to compensation pursuant to the provisions of Sections 7 and 67 of the Residential Tenancy Act (the “Act”)?

Background and Evidence

The Tenant took possession of the rental unit in the beginning of 2000. The Landlord inherited the tenancy in October, 2001. There is no written tenancy agreement between the parties. Monthly rent is \$600.00, due on the first day of each month.

The rental unit is one of three suites in a house. The female Landlord occupies the main suite on a part-time basis, and the other two suites are rented out. The male Landlord lives in another province.

The Tenant gave the following testimony:

The Tenant used to manage the rental property until October, 2010, when the Landlords fired the Tenant. The Tenant testified that since he was fired, the Landlords have been harassing him to move out of the rental unit. The Tenant testified that the Landlords tried to raise his rent by \$300.00 a month and also tried to pay him to leave. He stated that the Landlords provided him with two other Notices to End Tenancy in the past three months:

- Notice to End Tenancy for Cause; and
- Notice to End Tenancy for Landlord’s Use.

The Tenant applied to cancel both of those Notices to End Tenancy and was successful on each application.

The Tenant testified that there was a serious altercation between him and the female Landlord on April 3, 2011, while they were both gardening in the back yard. The Tenant

testified that the Landlord assaulted his dog, kneeling his dog twice, before going into the house and calling the police.

The Tenant seeks to recover wages that he believes the Landlords owe him for work done at the rental property. The Tenant also seeks compensation for his patio furniture that he believes the female Landlord disposed of, without his permission.

The Tenant seeks a monetary award, calculated as follows:

| | |
|---|-----------------|
| Compensation for harassment (Oct/10 – Mar/11 @\$600.00 per month) | \$3,600.00 |
| Cost of pressure washing | \$200.00 |
| Garbage removal | \$300.00 |
| | \$60.00 |
| Fall clean-up around front lawn and gardens | \$150.00 |
| Empty and clean central vacuum system | \$80.00 |
| Call for fuel and re-start furnace | \$80.00 |
| Snow removal | \$160.00 |
| Cost of outdoor furniture | <u>\$200.00</u> |
| TOTAL CLAIM | \$8,430.00 |

The Tenant testified that he was late paying rent for March, but that he mailed the rent cheque to the Landlords, by regular mail, on March 3, 2011. He stated that when that cheque was not cashed, he put a stop payment on it and issued another, which he sent by registered mail on March 15, 2011.

The Landlords gave the following affirmed testimony:

The Landlord testified that he received the Tenant's March rent cheque on March 19, 2011 and issued a receipt for "use and occupancy only". The Landlord asked for an Order of Possession.

The Landlord stated that he had offered to pay the Tenant for work done, if the Tenant provided documentary proof of the work. He stated that he had offered to pay the Tenant's moving expenses if the Tenant agreed to move out, but didn't believe that was harassment.

The female Landlord testified that she did not know that the patio furniture belonged to the Tenant and thought it might have been abandoned by the other tenant, who had moved out. She stated that the furniture consisted of a white plastic table and white plastic chairs that were stained and broken.

The female Landlord testified that there was a guest staying for 2 weeks with the Tenant and that she believed the rental unit was too small for two men, as it is a one bedroom unit. She stated that she asked the Tenant about his guest but did not believe she was harassing him.

The female Landlord testified that she did not kick the Tenant's dog on April 3, 2011. She stated that the Tenant was highly agitated about her using a rake, and she was trying to make her way back to her home. The dog was lying in the pathway and she straddled the dog to get by. She testified that the Tenant started using profanity and she was frightened so she locked her doors and called the police.

Analysis

Section 46(1) of the Act states:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy **if rent is unpaid on any day after the day it is due**, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(emphasis added)

Section 46(4) of the Act states:

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

I accept that the Notice to End Tenancy (the “Notice”) was served in accordance with the provisions of Section 89(1)(c) of the Act. Documents served in this manner are deemed to be received 5 days after mailing. Therefore, I find that the Tenant received the Notice on March 9, 2011. The Tenant had 5 days from receiving the Notice to **pay the rent or file an Application** to dispute the Notice to End Tenancy. The Tenant filed the Application on March 14, 2010, within the 5 days allowed under Section 46(4) of the Act. However, the Tenant agreed that he was late paying the rent, and therefore there is no reason to cancel the Notice as he did not pay the rent within five days of receiving the Notice. The Tenant placed a stop payment on the cheque that was mailed on March 3, 2011. Registered mail sent on March 15, 2011, is deemed to be received on March 20, 2011, some 6 days after the last day the Tenant could pay the rent under Section 46(4). The Landlord accepted the Tenant’s late rent payment for “use and occupancy only” for the month of March, 2011, and did not enter into a new tenancy agreement. Therefore, the Tenant’s application to cancel the Notice is dismissed.

The Landlord requested an Order of Possession.

Section 55(1) of the Act states:

Order of possession for the landlord

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 find that the effective date of the end of the tenancy was March 19, 2011. Further to the provisions of Section 55(1) of the Act, I hereby provide the Landlord with an Order of Possession **effective 2 days after service of the Order upon the Tenant.**

The tenancy is ending and therefore, I dismiss the Tenant's application for a rent reduction.

The parties co-mingled an oral tenancy agreement with an oral employment agreement. Section 67 of the Act authorizes the director to determine claims that arise from a party not complying with the Act, regulation or a tenancy agreement. I have no authority to determine claims that arise out of employment contracts. Therefore, the Tenant's claims for compensation for monies owed for grounds keeping and fall clean-up; pressure washing; garbage removal; cleaning the central vacuum system; re-starting the furnace; and snow removal on the common property are dismissed.

With respect to the Tenant's claim for compensation for his patio furniture, the Tenant did not provide sufficient documentary evidence to prove that the patio furniture was worth \$200.00. However, the female Landlord agreed that she disposed of the patio set without confirming who it belonged to. I award the Tenant a nominal amount of \$50.00 for this portion of his claim.

This hearing was challenged by the degree of animosity between the parties. The Tenant testified that the Landlords were harassing him and the female Landlord testified that the opposite was true. However, looking at the totality of the evidence (i.e. the second Notice to End Tenancy issued shortly after the first one was canceled on December 13, 2010; the Landlords' attempt to raise the rent by 50%), I find on the balance of probabilities that the Tenant's application for compensation for loss of peaceful enjoyment has some merit and that the tenancy was devalued as a result. I award the Tenant \$360.00 (10% of the value of the tenancy, from October, 2010 to March, 2010).

The Tenant has been partially successful in his claim and is entitled to recover \$25.00 from the Landlord for the cost of the filing fee.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed.

I hereby provide the Landlord an Order of Possession effective 2 days after service of the Order on the Tenant. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Tenant with a Monetary Order in the amount of \$435.00 against the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 04, 2011.

Residential Tenancy Branch