



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a Notice to end tenancy for unpaid rent and to obtain an Order to allow the Tenant to reduce rent for repairs, services, or facilities agreed upon but not provided.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenant, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has a valid 10 Day Notice to End Tenancy been issued and served upon the Tenant in accordance with the *Residential Tenancy Act*?
2. Has the Tenant met the burden of proof to be allowed reduced rent for repairs agreed upon and not provided?

Background and Evidence

The parties entered into a written month to month tenancy agreement that began on July 1, 2011. Rent is payable on the first of each month and on or before July 1, 2011 the Tenant paid \$300.00 as the security deposit. The parties conducted a walk through at the outset of the tenancy but did not complete a move in inspection report.

The Landlord affirmed the 10 Day Notice to end tenancy was not issued for unpaid rent. He stated that he attached an addendum to the Notice to indicate the reasons why he was giving Notice to end the tenancy which had to do with ending the tenancy for cause.

The Tenant affirmed that he was seeking reduced rent because his bath/shower taps have been leaking hot water since the beginning of his tenancy. Each apartment has their own hot water tank and pays their own hydro bill. The Tenant stated that it takes

almost three hours to fill the bath because he has to turn off the water to allow it to be heated again before adding it to the tub. He states that this problem also affects showering. He confirmed that he has never put his request for repair in writing and that the Landlord has been in his unit twice to look at it and keeps saying he will return to fix it but never does. He claims this has negatively affected his overall enjoyment of his apartment.

The Landlord acknowledges that the tap requires repairs and that in fact he was the person who pointed out the issue to the Tenant during their walkthrough of the unit. He advised that parts have been on order for several months however the supplier has sent him the wrong parts on two occasions now which is delaying the repair. He stated that there is a second rental unit which is experiencing the same problem and that given the age of the building he will need to turn the water off for the entire building when he conducts the repairs so he needs to ensure he has all of the correct parts in hand before turning off the water. These repairs require removal of a portion of the wall which he has already started in the other unit so it is not like he is ignoring the repair.

The Landlord stated that he does not believe the leak is substantial enough to cause the hot water tank to drain down to the point where the Tenant would have to wait several intervals over the course of hours for the water to be heated in order to take one bath or shower. He also clarified that the Tenant did not mention to him that this repair was being a problem and he had no notice of this until he saw it written on the Tenant's application form.

Analysis

Upon review of the 10 Day Notice to End Tenancy, I find the Notice not to be completed in accordance with the requirements of the Act as it was not issued for unpaid rent. The Notice was issued for cause and the Landlord attempted to circumvent 1 Month Notice by issuing a 10 Day Notice and attaching an addendum for the cause. Accordingly, I uphold the Tenant's request to have the 10 Day Notice cancelled.

When making an application for reduced rent under section 65 of the Act, the applicant bears the burden of proof. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Tenant has the burden to prove that he informed the Landlord, in writing; of the required repairs and that the Landlord has failed to conduct the required repairs in a reasonable amount of time. The only evidence before me was

disputed verbal testimony, therefore I find there to be insufficient evidence to meet the Tenant's burden of proof. Accordingly I dismiss the Tenant's claim for reduced rent.

I further find that upon receipt of this decision the Landlord has been advised of the required repair, in writing, and is therefore required to complete the repair pursuant to section 32 of the Act. If the Landlord fails to complete the repair or replacement in a reasonable amount of time the Tenant would be a liberty to seek monetary compensation at a future date.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The 10 Day Notice to End Tenancy dated September 17, 2011 is HEREBY CANCELLED and is of no force or effect.

The Tenant's application for reduced rent is HEREBY DISMISSED.

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: October 20, 2011.

Residential Tenancy Branch