



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, ERP, RP, PSF, RR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; a monetary order; and an order to have the landlord complete emergency repairs; repairs and provide services or facilities required by law.

The hearing was conducted via teleconference and was attended by the tenant, the landlord and her agent.

At the start of the hearing the landlord request an order of possession should the tenant not be successful in her Application to cancel the notice to end tenancy.

The tenant testified that she is vacating the rental unit at the end of November 2011 and as such I amend the portion of the tenant's Application to exclude the matter of cancelling the notice to end tenancy and to all matters related to the ongoing tenancy including emergency repairs; repairs; and to provide services or facilities required by law.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for damage or loss, pursuant to Sections 28, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the landlord is entitled to an order of possession, pursuant to Sections 55, of the *Act*.

Background and Evidence

The tenancy began on January 4, 2011 as a month to month tenancy agreement with monthly rent paid of \$650.00 on the 1st of each month with a security deposit of \$325.00 paid on January 4, 2011.

The tenant asserts the tenant and her boyfriend constantly disrupt her by jumping up and down on the floor of their unit above the tenant; that the landlord plays with her dog by throwing balls for the dog to chase and the tenant finds this completely disruptive.

The tenant asserts there are plumbing problems and a mouse problem that the landlord refuses to address. The landlord testified that she has arranged on several occasions for a plumber to come look at the problem but that the tenant has refused to allow the plumber into the unit.

The tenant states that she will not allow the landlord in to the rental unit if she is not there and therefore when the landlord gave her less than 24 hours notice of the plumber's visit she had to not allow it because she had appointments and could not attend both.

The tenant states that she asked to speak only to the landlord's daughter but that the daughter and landlord both refuse to respond to this request. The tenant asserts the parties have had other altercations including a time when the tenant states the landlord's boyfriend assaulted her, over the delivery of mail.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32 of the *Act* requires a landlord to provide a rental unit in a state of decoration and repair that, among other things, having regard to the age character and location of the rental unit makes it suitable for occupation.

Section 28 allows the tenant the right to be free from unreasonable disturbances. In the event that a rental unit is in the basement of a house it is quite likely that noise will transfer between the floors, this would be consistent with having regard to the age and character of the unit requirements under Section 32.

In the case of verbal testimony and in the absence of any corroborating testimony or evidence, I find that when both the landlord and tenant agree on the interpretation of events, there is no reason why such terms cannot be enforced. However when the parties disagree with what was occurred, the verbal testimony, by its nature, is virtually impossible for a third party to interpret when trying to resolve disputes.

As such, I find the tenant has failed to establish any loss, or that any loss exists as a result of the landlord's violation of the *Act*, regulation or tenancy agreement. I therefore dismiss the tenant's Application in its entirety and without leave to reapply.

Section 55 of the *Act* states that if a tenant makes an Application for Dispute Resolution to dispute a landlord's notice to end a tenancy I must grant the landlord an order of possession if the landlord makes an oral request for an order of possession and I dismiss or uphold the landlord's notice.

As the tenant has withdrawn her Application to dispute the Notice to End Tenancy issued by the landlord on October 31, 2011 and as the hearing was conducted well beyond the 15 days allowed for the tenant to file another Application for Dispute Resolution to cancel the Notice, I must uphold the landlord's notice and issue the landlord an order of possession for the effective date of the notice.

Conclusion

I find the landlord is entitled to an order of possession effective **December 31, 2011 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: November 24, 2011.

Residential Tenancy Branch