



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, MNDC, ERP, RR, PSF, RP, RPP, LRE, AAT, LAT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Unpaid Rent. The tenant was also seeking a monetary order. In addition to the above, the tenant's application indicated that the tenant was seeking orders:

- to force the landlord to do repairs and emergency repairs,
- to provide services and facilities required by law,
- to return the tenant's property,
- to suspend the landlord's right to enter,
- to allow the tenant access to and from the unit,
- to permit the tenant to change the locks and
- for monetary compensation.

Both the landlord and the tenant appeared at the hearing and each gave testimony.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the One-Month Notice to End Tenancy for Unpaid Rent was valid or whether it should be cancelled as requested by the tenant.
- Whether the landlord should be ordered to do repairs, to supply services and facilities required by law, to return the tenant's property, to allow the tenant access, to follow conditions for the landlord's access and to permit the tenant to change the locks .

- Whether the tenant is entitled to monetary compensation for loss of the refrigerator and reimbursement for the costs of eating elsewhere due to undrinkable water.

The burden of proof is on the landlord/respondent to justify that the Notice to End Tenancy complies with the criteria specified under the Act. The burden of proof is on the tenant to justify the remaining issues including the monetary claim for damages or loss.

Background and Evidence

The tenancy began in May 2011 and the rent is \$685.00. A security deposit of \$342.50 was paid. The landlord testified that a Ten Day Notice to End Tenancy for Unpaid Rent was served on December 2, 2011. A copy of the Notice was in evidence. The landlord testified that the Notice was issued because, the tenant failed to pay the rent owed for December.

The tenant acknowledged that he did not pay the rent, but stated that this was because he was forced to use a deficient and mouldy refrigerator that made his food unfit to eat and could not drink the water as it made him sick. The tenant testified that he had tried to flush out the water lines but this was stopped by the landlord and did not resolve the problem. The tenant testified that he had no choice but to spend money eating out and travelling to stay with relatives and had receipts to verify the expenditures, but did not have time to submit these.

The landlord pointed out that the tenant's dissatisfaction with the refrigerator was a matter that was already heard and decided at a previous hearing held on December 12, 2011. With respect to the tenant's allegations about the quality of the water, the landlord testified that this issue was never raised by the tenant in his last application nor prior to that during the tenancy. The landlord stated that the water is fine as far as he knows. The landlord disagreed with the monetary claim in every respect.

The tenant testified that he was missing property including a generator and a dolly and believes that the landlord came onto the property in his absence and took them.

The landlord denied taking any of the tenant's possessions.

With respect to the other requests, the tenant gave testimony about his dissatisfaction with the landlord's response to his requests during the tenancy and felt that the landlord was not following the Act or agreement properly.

Analysis Notice to End Tenancy

In regard to the unpaid rent, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord had complied

with the Act, the regulations or the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due.

When a tenant fails to comply with section 26, section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. This section of the Act also provides that, within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect. In this instance I find that the tenant did not pay any of the arrears owed.

The Ten-day Notice includes written instructions on page 2 informing the tenant about the responsibilities of both parties. Under the heading, "Important Facts", the form cautions that, "*The tenant is not entitled to withhold rent unless ordered by a dispute resolution officer*".

In this instance I find that the tenant was in arrears at the time the Notice was served on December 2, 2011 and the tenant did not pay the arrears and in fact continued to withhold his rent to date.

For this reason, I find that I cannot cancel the Notice as it is valid and warranted. Given that the tenancy is ending, I decline to consider the tenant's requests for orders with respect to repairs, to supplying services and facilities required by law, allowing the tenant access, imposing conditions and restrictions for the landlord's access and permission for the tenant to change the locks .

With respect to the tenant's request for the return of missing property, I find that the tenant failed to sufficiently prove that this missing property is in the landlord's possession.

With regard to the portion of the tenant's application seeking monetary compensation, I find that an Applicant's right to claim damages from another party falls under section 7 of the Act which states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The burden of proof, however, is on the tenant, to prove the existence and value of the damage/loss stemming directly from a violation of the Act by the landlord.

I find that the issue of the deficient refrigerator was dealt with at a previous hearing. *Section 77* of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order of the director is final and binding on the parties I find that the principle of res

judicata applies, meaning that the matter has already been decided and is therefore final and binding on the parties. I therefore lack any power or authority to consider this matter and make any alternate decision.

With respect to the alleged loss caused by contaminated water, I find that the tenant has not sufficiently proven that the water was unfit to drink and that he was forced to spend money as a result. I find the tenant did not submit evidence to show that he had ever brought this to the landlord's attention in writing, nor was there any independent verification about the quality of the water. Moreover, no receipts were submitted by the tenant with respect to his actual costs. Because the tenant has not met the burden of proof, I find that the tenant's monetary claims must be dismissed.

Conclusion

Based on the evidence and the testimony discussed above, I dismiss the portion of the tenant's application requesting that the Ten-Day Notice to End Tenancy for Unpaid Rent be cancelled.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession effective December 31, 2011. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The remainder of the tenant's application is hereby dismissed without leave to reapply.

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: December 20, 2011.

Residential Tenancy Branch