



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, MNDC, OLC, ERP, RP, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; a monetary order for emergency repairs and for damage or loss; an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; to make emergency repairs and repairs.

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

During the hearing, the landlord verbally requested an order of possession should the tenant be unsuccessful in his Application.

During the hearing I requested the landlord provide a copy of the tenancy agreement before the end of business on January 20, 2012. The landlord provided a copy the same day.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to a monetary order for emergency repairs and damage or loss; for an order to have the landlord complete emergency repairs and repairs; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 33, 46, 67, and 72 of the *Act*.

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

Background and Evidence

The parties agree the tenancy began on August 1, 2011 for a 1 year fixed term tenancy for a monthly rent of \$1,100.00 due on the 1st of each month with a security deposit of \$550.00 paid.

The tenant provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on January 5, 2012 with an effective vacancy date of January 15, 2012 for unpaid rent in the amount of \$2,800.00 due on January 1, 2012. The parties confirmed the landlord served the tenant the Notice on January 5, 2012.

The landlord testified that the tenant had failed to pay rent on January 1, 2012 and that he had previous arrears that he had allowed the tenant to make payments on, however once the tenant failed to pay any rent for January, 2012 the landlord issued the Notice for all outstanding rent.

The tenant testified that he disagrees with the amount of the arrears. The landlord has stated the tenant owes \$1,100.00 for January 2012 plus \$1,700.00 in arrears. The tenant does not dispute that he did not pay rent for January 2012 but believes the arrears should be approximately \$300 less. Neither party provided any documentary evidence as to the total amount of arrears or any payments made against the debt.

The tenant seeks compensation in the amount of \$5,000.00 for the loss of comfort; loss of tenants/roommates; additional hydro costs; no heat and lack of furnace. The tenant testified that the basement floods all the time and is filled with a large amount of debris including furniture; clothing; syringes and other assorted items.

The tenant stated that the landlord has provided 2 space heaters but that is insufficient to heat a 3 bedroom house. The landlord testified the tenant never asked him for any additional heaters after he provided the tenant a 2nd heater upon the tenant's request. The tenant testified he was aware at the start of the tenancy the furnace was not working.

The landlord testified that he had clearly outlined to the tenant that the tenancy did not include the basement or the bedroom upstairs (the 3rd bedroom). The landlord also testified that the tenant never told him he was having new tenant/roommates. The tenancy agreement contains the following handwritten statement above the tenant's signature: "Does not include the basement or upper floor".

The tenant testified the roommates moved out because there was no heat. He further stated that even though the tenancy agreement did not include the basement, he still had to live above the damp and often wet basement and its contents and he felt he was having health issues related to it.

Analysis

Section 46 of the Act allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving the tenant a notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Despite the tenant's assertion that the amount of the arrears noted on the notice is not correct, the tenant's admission that he failed to pay the rent on January 1, 2012 is sufficient to uphold the landlord's right to end the tenancy. I dismiss the portion of the tenant's Application seeking to cancel the 10 Day Notice.

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.

As the tenant was aware there was no furnace in the rental unit at the start of the tenancy, I find the tenant has suffered no loss as a result of inadequate heating and therefore comfort. I also find the tenancy has failed to establish that he had paying roommates and the reasons why they are no longer there and how that relates to a violation of the *Act*, regulation or tenancy agreement on the part of the landlord.

From the testimony of both parties I accept the basement floods and the debris is likely rotting, however, the tenant has failed to provide any evidence to establish that this has had any effect on his health or comfort. For these reasons, I dismiss the tenant's Application for any compensation.

Conclusion

I find the landlord is entitled to an order of possession effective **two days 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: January 20, 2012.

Residential Tenancy Branch