



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, CNC, MNDC, OLC, RP, PSF, RR, and FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; to set aside a Notice to End Tenancy for Unpaid Rent; for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order requiring the Landlord to provide services or facilities; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to make emergency repairs to the rental unit; and to recover the fee paid to file this Application for Dispute Resolution.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy for Unpaid Rent; the application to set aside the Notice to End Tenancy for Cause; and the application for emergency repairs. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the Tenant's request to set aside the Notice to End Tenancy for Cause/ Notice to End Tenancy for Unpaid Rent, the application for an Order requiring the Landlord to make emergency repairs; and the Tenant's application to recover the filing fee for these proceedings. The application for an Order requiring the Landlord to make emergency repairs is only being considered at this hearing as the Tenant indicated there are urgent health and safety issues at the rental unit. The balance of the Tenant's Application for Dispute Resolution is dismissed, with leave to re-apply.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord and the Tenant agree that the Tenant personally served the Landlord with the Application for Dispute resolution, the Notice of Hearing, and a package of evidence on January 26, 2012. The Landlord served no evidence in this matter.

Issue(s) to be Decided

The issues to be decided in this decision are whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside; whether the Notice to End Tenancy for Unpaid rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside; whether there is a need to issue an Order requiring the Landlord to make emergency repairs; and whether the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that the parties entered into a written tenancy agreement, which stipulates that the tenancy began on November 01, 2011; that the Tenant was required to pay monthly rent of \$550.00; and that the rent was due each month on the “first day of the rental period which falls on the ____ day of each month”.

The Landlord stated that he interprets the tenancy agreement to mean that rent is due on the first day of each month, as the agreement specifies the tenancy is a “month to month” tenancy that began on the first day of the month. The Tenant stated that because the section which specifies the day of the month in which the rent is due is not completed, the rent can be paid on any day of the month.

The Landlord and the Tenant agree that the parties verbally agreed to reduce the rent to \$500.00 per month, effective December 01, 2011, in compensation for withdrawal of laundry facilities.

The Landlord and the Tenant agree that the Tenant pays his rent, in cash, directly to the Landlord. The Tenant stated that he sent a text message and left a phone message for the Landlord on January 01, 2012 in an attempt to pay his rent for January, but the Landlord did not respond to his messages. He said that he left several messages for the Landlord to arrange a time to pay his rent but they could not find an acceptable time to meet.

The Landlord stated that he received no messages from the Tenant on January 01, 2012; that on January 03, 2012 he sent a text message to the Tenant to arrange a meeting on that day; that the Tenant did not respond to this text message; that they met on January 09, 2012 at which time the Tenant advised him he would pay his rent once the Landlord made repairs to the rental unit.

The Tenant acknowledged that he met with the Landlord on January 09, 2012. When asked why he did not pay his rent on that occasion he stated that the discussion was simply about repairs to the rental unit and the Landlord never asked him for the rent.

The Landlord stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent and a One Month Notice to End Tenancy for Cause on the door of the rental unit on January 21, 2012. The Tenant stated that he found both of these Notices in a bag on the floor near the entrance to his unit on January 22, 2012.

When asked if the Tenant attempted to pay his rent after he received the Notice to End Tenancy for Unpaid Rent on January 22, 2012 he stated that he was unable to contact the Landlord. When asked why he didn't simply pay the rent when he served the Landlord with the Application for Dispute Resolution on January 26, 2012, he stated that paying rent was "not on his mind".

When asked what emergency repairs were required to the rental unit the Tenant stated that there was mould growing in the rental unit; that he was concerned that there may be problems with the electrical system, as a circuit breaker tripped when he plugged in his microwave; and that the smoke detector was not working. The Landlord stated that the Tenant had told him the smoke detector was not working but he has not yet had a chance to investigate that report.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord and the Tenant entered into a tenancy agreement that currently requires the Tenant to pay monthly rent of \$500.00 by the first day of the month.

In my view, the tenancy agreement very clearly expresses that the tenancy is a month to month tenancy; that the tenancy began on November 01, 2011; and that the rent is due on the "first day of the rental period". Even though the section of the tenancy agreement that specifies the day of the month in which the rent is due is blank, I find that most reasonable people would interpret the first day of a monthly rental period to be the first day of the month, particularly in circumstances where the tenancy began on the first day of the month.

I find that the two rent receipts that were submitted in evidence by the Tenant served to reinforce that rent was due on the first day of each month, as these receipts clearly indicate that the rental period runs from the first day of the month.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the

probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the version of events provided by the Tenant at various times during this hearing to be highly improbable. In regards to the date the rent was due, I note that the Tenant agreed that his reduced rent of \$500.00 was payable on the first day of December, which is inconsistent with his statement that it was payable on any day of the month. I further note that the Tenant contends that he left messages for the Landlord on January 01, 2012 to make arrangements to pay his rent, which causes me to believe that he understood the rent was due on the first day of the month.

The above factors, when considered in their entirety, cause me to conclude that the Tenant did understand that his rent was due on the first day of each month and I find his testimony that he thought he could pay it on any day of the month to be a self-serving attempt to avoid paying rent when it is due.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant has not paid the rent that was due on January 01, 2012. I find the Tenant's explanation that he was unable to pay the rent for January because he was unable to meet with the Landlord to be wholly unbelievable, given that the parties agree that they met on January 09, 2012, at which time they discussed deficiencies with the rental unit.

I favor the testimony of the Landlord, who stated that when they met on January 09, 2012 the Tenant told him he would not pay the rent until repairs were made to the rental unit, over the testimony of the Tenant, who stated that they never even discussed the rent when they met on January 09, 2012. I find the version of events provided by the Landlord more probable than the version of events provided by the Tenant, as I find it highly unlikely that a landlord would not ask for rent that is several days overdue. I also find the testimony of the Landlord is consistent with the Tenant's position that several repairs were needed to the rental unit.

I further discount the Tenant's explanation that he was unable to pay the rent for January because he was unable to meet with the Landlord because he met with the Landlord on January 26, 2012, when he personally served the Landlord with his Application for Dispute Resolution. I find, therefore, the Tenant had ample opportunity to pay his rent.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy in ten days if appropriate notice is given to the tenant. On the basis of the Tenant's testimony, I find that the Tenant received a Ten Day Notice to End Tenancy for Unpaid Rent on January 22, 2012, served pursuant to section 46 of the *Act*. This Notice to End Tenancy declared that the Tenant had failed to pay rent of \$500.00 that was due on January 01, 2012 and declared that he must vacate the rental unit by January 31, 2012.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant acknowledged receiving this Notice on January 22, 2012, I find that the earliest effective date of the Notice was February 01, 2012.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was February 01, 2012.

As the Tenant did not pay rent when it was due on January 01, 2012 and he has not yet paid rent for January of 2012, I find that the Landlord has grounds to end this tenancy pursuant to section 46 of the *Act*.

As this tenancy is ending pursuant to section 46 of the *Act*, I find that there is no need to consider the Tenant's application to set aside the One Month Notice to End Tenancy for Cause. I decline to consider the matter or the One Month Notice to End Tenancy as this tenancy will be ending before the effective date of the One Month Notice to End Tenancy.

I find that problems with mould do not constitute an emergency repair, as defined by section 33(1) of the *Act* and I therefore decline to make an Order requiring the Landlord to investigate the Tenant's concerns regarding mould.

I find that an overloaded electrical circuit does not necessarily constitute an emergency repair, as the most common cause of a tripped breaker is having too large a load on one circuit, which can be easily remedied by turning off some of the devices to reduce the load. In the absence of evidence of a serious electrical hazard that requires immediate repair, I decline to order the Landlord to make repairs to the electrical system.

I find that a malfunctioning smoke detector is an emergency repair, as defined by section 33(1)(c)(v) of the *Act*, as it is an important safety feature that should be repaired/replaced immediately. At the hearing the Landlord was ordered to attend the rental unit on February 15, 2012 at 7:00 p.m. to initiate repairs to the smoke detector.

Conclusion

As I have determined that the Landlord has satisfied the legislative requirements to end a tenancy for unpaid rent, I dismiss the Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent and I grant the Landlord an Order of Possession, as requested at the hearing, that will be effective two days after it is served upon the Tenant.

As the Tenant's application has some merit, I hereby authorize the Tenant to deduct \$50.00 from rent due to the Landlord, as compensation for the filing fee he paid for this Application for Dispute Resolution.

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: February 16, 2012.

Residential Tenancy Branch