Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNR, FF
Tenants: CNR, RP, RR, FF

Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 22, 2012, for an Order that the Landlord make repairs, for a rent reduction and to recover the filing fee for this proceeding. The Landlord applied for an Order of Possession and a Monetary Order for Unpaid Rent as well as to recover the filing fee he paid for this proceeding.

RTB Rule of Procedure 2.3 states that "*if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply*." I find that the Tenants' application for repairs and for a rent reduction (due to a loss of amenities and for compensation for repairs made by the Tenants) are not sufficiently related to their application to cancel the 10 Day Notice and therefore those parts of the Tenants' application are dismissed on the terms set out in the Conclusions section of this decision.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on March 7, 2012 to the rental unit address. According to the Canada Post online tracking system, a notification card was left for the Tenants on March 8 and 14, 2012, respectively.

The Tenant, A.B., claimed that neither he nor C.L. received this mail because the Landlord has not provided them with a key to the mail box for the rental property. The Tenant admitted that he and his co-tenant, C.L., were advised by Canada Post to pick up their mail from a post office however A.B. claimed that when he attended the post office on March 8, 2012 (for the first time) he was unable to do so because he did not have proper identification. A.B. claimed that it was only then that he made an application for a birth certificate. Consequently, A.B. claimed that to date he has been unable to collect any mail sent to him at the rental unit address. A.B. also claimed that although C.L. did have identification, there was no mail at the post office for her when they attended the post office on March 8, 2012 and that she has not returned to the post office since that date to check for any mail. The Landlord argued that the Tenant is able to obtain a key for the mail box without his written authorization.

I find that the Tenants were served with the Landlord's hearing packages as required by s. 89 of the Act. In particular, I find it unlikely and unreasonable that the Tenant, A.B.,

would allow his mail to accumulate for 4 months before finally sending away for identification so that he could collect it. I also find it equally unlikely that C.L. did not receive a notice of the registered mail on March 8, 2012 and find it unreasonable that she would not check her mail (for correspondence related to these proceedings) after March 8, 2011 given that the address for service of documents used on the Tenants' application is the rental unit address.

The Tenant, A.B., admitted at the hearing that he had not served the Landlord with his evidence package. Consequently, the Tenants' evidence package (with some exceptions) is excluded pursuant to RTB Rule of Procedure 11.5(b). I find however that some of the documents contained in the Tenants' evidence package (ie. a tenancy agreement, 10 Day Notice, and some utility statements) were also included in the Landlord's evidence package and therefore, I find that those documents only are admissible.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent and utility arrears and if so, how much?

Background and Evidence

The Landlord said this 4 month fixed term tenancy started on November 1, 2011 however the Tenant, A.B., claimed that it started on October 16, 2011 when they moved in. Rent is $1,600.00 per month payable in advance on the 1st day of each month plus 60% of the utilities for the rental property. The Tenants paid a security deposit of $800.00 at the beginning of the tenancy.

The Parties agree that on February 22, 2012, the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 22, 2012 on the rental unit door. The Notice alleged that rent for February 2012 had not been paid and that utilities in the amount of $331.40 were also unpaid. The parties also agree that the Notice was accompanied by a written demand for $331.40 and copies of the applicable utility billing statements. The parties further agree that the Tenants did not make any further payments to the Landlord and that these amounts as well as rent for March 2012 are unpaid. The Tenant, A.B., said he believed he did not have to pay anything until the dispute resolution hearing was concluded.

The Tenant, A.B., also argued that on or about December 20, 2011 he met with the Landlord and the Landlord advised him that he wanted the Tenants to pay 100% of the utilities for the rental property. A.B. said he reluctantly agreed to do so and paid a total of $405.00. Consequently, the Tenants argued that they made an overpayment of utilities which they should now be entitled to deduct from any rent owed to the Landlord. The Landlord claimed that the Tenant paid $402.00 and that this amount was for rent for

January 2012 less deductions for the Tenants' compensation claim. The Tenants denied this and claimed that they have a receipt from the Landlord for the full amount of rent for January 2012 and that the 10 Day Notice to End Tenancy did not include any amount for those utility bills.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

Although the Tenants filed their application for dispute resolution to cancel the 10 Day Notice within the 5 days granted under s. 46(4) of the Act, I find that there are no grounds for their application. The Tenants admitted that rent for February 2012 and utilities were owed as of February 22, 2012 and that they have not paid those amounts. The Tenant, A.B., said that he believed he could wait until a decision was issued after the dispute resolution hearing before paying the arrears. However s. 26(1) of the Act says that "***a Tenant must pay rent when it is due under the tenancy agreement whether or not the Landlord complies with the Act, unless the tenant has a right under the Act to deduct all or a portion of the rent***."

In other words, filing an application for dispute resolution does not operate to relieve a tenant of the obligation to pay rent when it is due. A tenant is only entitled under the Act to withhold rent if he or she already has an Order from the Residential Tenancy Branch authorizing him or her to deduct amounts from his or her rent or if the Tenant incurred expenses for emergency repairs. I find that neither of these situations applied in this case. As a result, the Tenants' application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 22, 2012 is dismissed without leave to reapply. As a further result, I find that the Landlord is entitled pursuant to s. 55(1) of the Act to an Order of Possession to take effect 2 days after service of it on the Tenants. The Landlord also stated at the hearing that if his application was dismissed for a lack of service, he wished to make an oral application for an Order of Possession.

The Parties agree that the Tenants have not paid rent for February and March 2012 and as a result, I find that the Landlord is entitled to recover **$3,200.00**. The Parties also agree that the Tenants have not paid their 60% share of the following utilities in the total amount of **$332.25**:

- Electricity (Nov. 23 – Jan. 23): $320.65
- Gas (Dec. 14 – Jan. 16): $11.60

Subtotal: $332.25

Consequently, I find that the Landlord is entitled to recover that amount. The Tenants argued that they made an overpayment of approximately $200.00 for the following utility statements which the Landlord denied:

- Gas bill (for the period Oct. 17 – Nov. 16, 2011);
- Electricity bill (for the period, Sept. 21 – Nov. 23, 2011);
- Water bill (for the period, Oct. 1 –Dec. 31, 2011)

The Landlord did not provide a copy of these invoices as evidence at the hearing and the Tenants did not serve the Landlord with a copy of them consequently they were excluded from evidence. The Landlord claimed that these utilities are still outstanding although his application did not include a claim for them. In the circumstances, I find that there is insufficient evidence to determine if the Tenants made an overpayment or not and as a result, that part of their application is dismissed with leave to reapply. I find it unnecessary to grant the Landlord leave to reapply to recover this amount as he did not make a claim for them on his application.

As the Landlord has been successful in this matter, I find that he is entitled pursuant to s. 72(1) of the Act to recover from the Tenants the **$50.00** filing fee he paid for this proceeding. Consequently, I find that the Landlord is entitled to a monetary award of $3,582.25.

Conclusion

The Tenants' application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 22, 2012, for repairs and to recover the filing fee for this proceeding is dismissed without leave to reapply. The Tenants' application for compensation and for an overpayment of utilities is dismissed with leave to reapply.

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **$3,582.25** have been issued to the Landlord. A copy of the Orders must be served on the Tenants; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia

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: March 21, 2012.

Dispute Resolution Officer