



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, CNL, OLC, RR, MNDC, LRE, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent and a Two-Month Notice to End Tenancy for landlord use. The tenant was also seeking monetary compensation for work done, a retro-active rent abatement for loss of value to the tenancy, an order that the landlord be forced to comply with the Act and an order to suspend or set conditions on the landlord's right to enter the rental unit.

Both parties appeared and gave testimony during the conference call.

At the outset of the hearing, the tenant advised that he had not received any Two Month Notice to End Tenancy for Landlord's Use so this portion of the tenant's application was amended to eliminate the request to cancel the Two Month Notice for Landlord's Use.

The tenant wished to proceed with the remaining claims

Issue(s) to be Decided

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

- Whether the Ten-Day Notice for Unpaid Rent should be cancelled.
- Whether the tenant is entitled to a monetary order for work performed.
- Whether the tenant is entitled to a rent abatement for loss of value.
- Whether the landlord should be ordered to comply with the Act.
- Whether there should be an order restricting the landlord's access.

Background and Evidence

The tenancy began in September 2011 and the current rent is \$2,000.00 per month. A security deposit of \$750.00 was paid.

No copy of the Ten Day Notice to End Tenancy for Unpaid Rent was submitted to Residential Tenancy Branch by the applicant/tenant in support the application.

The tenant acknowledged that he was in arrears for rent.

The tenant testified that in January 2012, the landlord had embarked upon significant renovations that disrupted the tenancy and that the landlord's work is still not completed at this point in time. The tenant testified that the renovations compromised the lower level and eliminated one bathroom. In addition, according to the tenant, the landlord failed to supply working laundry facilities which caused significant hardship for the tenant. The tenant pointed out that, although the rent for March and April was not paid, full rent had been paid for the months of January and February despite the ongoing disruptions. The tenant's position was that the lack of laundry and renovation work had reduced the value of the rental unit by 50%.

The tenant testified that the landlord also failed to compensate him and his co-tenant for work performed under an agreement in which the landlord had committed to pay or credit the tenant for tasks completed.

The tenant also took exception to the fact that the landlord was demanding \$650.00 for the payment of utilities, when the gas and hydro accounts were actually in the tenant's name.

The landlord acknowledged that there were on-going renovations, but stated that they only had affected the lower portion of the house and besides this fact, the tenant had agreed to these renovations that were aimed at improving the unit. The landlord testified that the non-functioning washers and dryers were the result of the tenant's persistent over-loading of the appliances, despite warnings not to do so by the landlord.

The landlord testified that a Ten Day Notice to End Tenancy for Unpaid Rent was issued because the tenant had failed to pay rent in March and had ignored the bill for municipal water consumption which was not included in the rent. The landlord also confirmed that a second Ten Day Notice to End Tenancy for Unpaid Rent was issued when the tenant defaulted on April's rent.

The landlord stated that if the tenant's application is dismissed he is requesting an order of possession.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulation or the tenancy agreement. 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, a tenant may dispute the notice by making an application for dispute

resolution. In this instance I find that the tenant made an application to dispute the Notice within the five-day period.

In addition, 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.

The above data clarifies the tenant's responsibility to pay rent. In this instance, both were in agreement that the rent for March and April was not paid. Therefore I find that there is no basis to justify cancelling the Ten Day Notice to End Tenancy for Unpaid Rent. That being said, without a copy of the Notice in evidence to confirm it is not flawed, I find that I am also not able to issue the landlord with an order of possession based on the missing Notice.

With respect to the tenant's request for compensation for labour performed under a work agreement, I find that this is not a matter that falls under the authority of the Residential Tenancy Act because it is not a tenancy matter and I find I must decline jurisdiction on this basis.

With respect to the tenant's request for a rent abatement, I find that section 32 of the Act imposes responsibilities on the landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. In this instance it is clear that the nature of the work had disrupted a portion of the unit and deprived the tenant of the use of one of the bathrooms.

In regard to the landlord's argument that the tenant had freely agreed to tolerate the substandard conditions, I find that section 5 of the Act states that landlords and tenants may not avoid or contract out of the Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect.

Given the above, I find that a retro-active rent abatement is warranted and that the normal rent of \$2,000.00 should be reduced to \$1,000.00 beginning in January 2012 and continuing until the renovation work is fully completed. I find that the tenant had paid a total of \$4,000.00 for January and February 2012 and is now in arrears for \$4,000.00 for March and April 2012. Based on what is owed to the tenant and by the tenant, I find that there are currently no arrears outstanding. I also find that on May 1, 2012 the tenant must pay a reduced rent of \$1,000.00.

The tenant has agreed to vacate the unit on June 1, 2012 and the landlord will therefore be issued an enforceable Order of Possession effective on that date by consent.

Conclusion

Based on the above, I hereby issue the landlord with an Order of Possession effective June 1, 2012 at 1:00 p.m. This order must be served on the tenant and may be enforced through the Supreme Court of B.C. if necessary.

I further grant the tenant a rent abatement of \$1,000.00 per month effective January 1, 2012 and continuing until the tenancy ends on June 1, 2012.

The remainder of the tenant's application including the request for reimbursement of the cost of filing the application, is 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: April 17, 2012.

Residential Tenancy Branch