



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, MNSD, RR

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order and an order to reduce rent.

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

During the hearing both parties understood this hearing to be, in part, regarding an Application from the tenants to cancel a 1 Month Notice to End Tenancy for Cause. While I advised both parties that there was no indication on the Application form itself that the tenants intended to dispute the notice both parties were prepared to speak to the issue and with agreement I accept the tenant's amendment to include dispute the 1 Month Notice to End Tenancy for Cause.

Further the tenants identified, at the start of the hearing, that they were seeking return of the security deposit prior to the end of the tenancy to help with their moving costs should they be required to move. As the *Residential Tenancy Act (Act)* prescribes the disbursement of security deposit at the end of the tenancy, I amend the tenant's Application to exclude this matter as it is premature at this time.

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

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause; to a monetary order for compensation for damage or loss and to an order to reduce rent for repairs not provided, pursuant to Sections 32, 33, 47, 67, and 72 of the *Act*.

If the tenants are unsuccessful in the portion of their Application seeking to cancel the 1 Month Notice to End Tenancy for Cause it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

Background and Evidence

The tenants provided a copy of a tenancy agreement signed by the parties on November 14, 2011 for a month to month tenancy beginning on November 15, 2011 for a monthly rent of \$850.00 due on the 15th of each month with a security deposit of \$425.00 paid.

Both parties provided a copy of a 1 Month Notice to End Tenancy for Cause issued on June 29, 2012 with an effective vacancy date of July 30, 2012 citing the tenants have repeatedly been late paying rent; that the tenants or persons permitted on the property by the tenant have significantly interfered with or unreasonably disturbed another occupant or the landlord and/or seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord submits the tenants were late paying rent in December 2011, January, February, May, and June 2012. The tenants submit that they have had to pay the rent late on occasion because the male tenants works late hours and while they have the rent when he gets home it is too late to take it to the landlord and so will pay the earliest possible time they can.

The female tenant states that she does not have access to the rent money and therefore requires the male tenant to pay it. The tenants also submit the late payments have not been a problem in the past but rather just since they started having trouble with the landlord.

In her written submission, however, the female tenant makes the following statements: "In April I walked the rent over and asked Gary....." and "I left a note for Gary with our rent cheque in early morning while driving Jesse to work".

The landlord testified the male tenant has attended the landlord's home (a few houses away from the rental unit) to deliver a document and got into an argument with the landlord's wife causing her severe stress. The landlord also submits the tenants have been driving at excessive speeds on the local roadways and the landlord is concerned for the safety of the neighbourhood.

The tenants seek compensation for replacement of a wireless internet hub and a signal booster in the amount of \$1,119.98. The tenants submit that they had reported a leak in the skylights and a window to the landlord in late April 2012 and that the landlord viewed the leaks on May 18, 2012.

The landlord submits that he completed some minor adjustments to the skylights and when the leaks were reported again he covered the skylights with tarps and sought out an estimate for repairs. The tenants submit that on June 15, 2012 despite moving their electronic equipment to the table the electronics were damaged when water again leaked into the unit from the window.

The tenants submit they reported, on January 7 2012, to the landlord that the stove was not working properly and that they would try to determine the problem. The tenants state that due to their busy schedule they were unable to attend to the issue and in early March 2012 they took the stove elements to the landlord and he returned them an ultimately determined they would not work and so he would get a replacement stove.

The tenants submit further that the landlord then, on May 18, 2012 informed them that a replacement oven would not be provided. The tenants seek compensation for failure to provide or repair the stove in the amount of \$600.00 based on \$100.00 per month retroactive to January 2012 and an ongoing rent reduction in the same amount.

The landlord submits that the tenants declined his offer to make the repairs 3 times and that the tenants did drop off the elements in late March 2012. He states that tested and reinstalled the elements in April and they were working fine. The landlord testified the oven was too dirty to work on and advised the tenants to contact him when it was clean enough for him to work on and that the male tenant then ordered the landlord off the property.

Analysis

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.

Section 32 of the *Act* requires a 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, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

In regard to the tenant's claim for compensation for the loss of their electronic equipment, I find the tenants reported the leaks to the landlord and that the landlord took steps to, at least temporarily, address the leaks. I also accept, based on the landlord's undisputed testimony, the landlord intended to complete more permanent repairs to the skylights and windows.

As such, I find the landlord has not failed in his obligations to make repairs required under Section 32. Further, I find by the tenants failing to move their electronic equipment and/or their table to a place that would not be subject to leaking while the repairs were being completed the tenants failed to take reasonable steps to mitigate the damage or loss.

In addition, Section 33 of the *Act* allows a tenant to have emergency repairs completed themselves, if the emergency repairs are needed; the tenant has made at least 2 attempts to phone the landlord or their agent and following those attempts the tenant has given the landlord reasonable time to make the repairs.

The section includes defining emergency repairs as: urgent; necessary for the health or safety of anyone or for the preservation or use of the residential property, and are made for the purpose of repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems.

As such, the tenants also failed to mitigate their loss of the electronic equipment by not having the emergency repairs completed or at least started if they felt the landlord was failing in his obligations to make the repairs. For these reasons, I dismiss this portion of the tenant's Application.

In relation to the tenant's claim for compensation for not having a stove since January 2012, I accept that the tenancy agreement includes the provision of a stove and that as a result of problems with the stove the tenants have suffered a loss in the value of the tenancy.

As per the testimony and submissions of both parties I find the tenants also contributed to the length of time that they have been without a stove and oven. However, I find, based on the submission of the landlord that he is willing to compensate the tenants for not having an oven from April on, that it is reasonable to compensate the tenants from that time forward.

As to the value of that compensation, I note that the tenants have provided no evidence to establish the value of the loss, but have submitted that they recently purchased a replacement stove for \$250.00. I find this amount to be reasonable compensation for the value of the tenants' loss.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement, if one or more of the following applies:

- a) The tenant is repeatedly late paying rent;
- b) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

From the tenants' own testimony, they acknowledge that rent has been paid late on the occasions identified by the landlord. Despite their assertion that it was not a problem identified by the landlord I find it is still a breach of the tenancy agreement.

Further to this despite the tenants' testimony that only the male tenant could pay the rent, from the female tenant's written submission, she has paid the rent to the landlord on at least 2 occasions. In addition, the tenancy agreement allows the tenants to provide the landlord with post dated cheques and from the written submission of the female tenant I find the tenants paid their rent by cheque.

Residential Tenancy Policy Guideline 38 states that 3 late payments of rent are the minimum number sufficient to justify a notice under the repeated late payment provision of Section 47. I note that from the undisputed testimony the tenants have been late at least 5 months out of the 8 months of the total duration of the tenancy. Based on the above, I find the landlord has provided justification to end the tenancy.

As I have found the landlord has established at least 1 of the grounds allowed under Section 47 to end the tenancy, I make no findings on the other causes identified in the 1 Month Notice to End Tenancy for Cause and I dismiss this portion of the tenants' Application. Further, based on the landlord's verbal request at the start of the hearing, I find the landlord is entitled to an order of possession.

Despite the tenants' assertion that the landlord cannot end the tenancy unless he gives three months notice in accordance with clause 11 of the tenancy agreement, I note the agreement refers to Section 17 of the "Act" that requires the notice to be in writing and Section 30 of the "Act" regarding the method of service.

The tenancy agreement includes references to the "Act" and identifies the "Act" as the "Residential Tenancies Act". The applicable act in British Columbia is entitled, as noted above, the *Residential Tenancy Act* and Section 17 deals with the landlord's ability to request a security deposit and Section 30 deals with the tenant's right to access protection. As such, any references to the "Act" in the tenancy agreement do not appear to be references to the *Residential Tenancy Act*.

In addition, when a term in a tenancy agreement that is contradictory or in conflict with the *Act*, it is the *Act* that prevails. In relation to the landlord's ability to end a tenancy under Section 47 (i.e. repeated late payment of rent), the *Act* allows the landlord to issue a 1 month notice.

Section 53 of the *Act* stipulates that if a landlord gives a notice to end tenancy effective on a date that does not comply with Section 47 the notice is deemed to be changed to the earliest date permitted under Section 47.

In the case before me, I find that since rent is due on the 15th of each month and the notice was issued by the landlord on June 29, 2012 the earliest possible date for the end of the tenancy is August 14, 2012.

Conclusion

I find the landlord is entitled to an order of possession effective **August 14, 2012 after service on the tenants**. This order must be served on the tenants. If the tenants fail 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.

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$250.00** comprised of compensation for loss of the use of a stove. As the tenants were largely unsuccessful in their Application, I dismiss the portion of their Application seeking to recover the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) 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: July 26, 2012.

Residential Tenancy Branch