



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, MNDC

Introduction

This hearing dealt with an application by the tenants pursuant to the *Residential Tenancy Act* for orders as follows:

1. To cancel a Notice to End Tenancy given for unpaid rent;
2. For a monetary Order for the cost of emergency repairs; and
3. For a monetary order for compensation for damage or loss

Both parties appeared the hearing of this matter and gave evidence under oath.

Issues

Have the tenants proven that the Notice to End Tenancy given for unpaid rent should be cancelled? Should the tenants be reimbursed for the cost of emergency repairs? Should the tenants be compensated for damage or loss under the Act?

Background

The tenants testified that on September 5, 2012 they were served a 10 day Notice to End Tenancy for unpaid rent due September 1, 2012. The tenants agree that they did not pay rent for September because they say they had no hot water for three weeks during the month of August. The tenants' argued that the Residential Tenancy Act allowed them to withhold their rent for emergency repairs.

The tenants say they are seeking compensation for going without hot water for three weeks during the month of August. The tenants say they have had ongoing problems with the hot water tank since December but on this occasion they were without hot water for three weeks. The tenants say they have 5 children and they went to great expense to take the children to a hotel or to travel out of town to friends' homes to bathe the children. In their written submissions the tenants listed a variety of complaints regarding repairs required on the property however they have not made application seeking to have those repairs completed.

The landlord submits that he served a 10 day Notice to End Tenancy on September 5, 2012 seeking September rent of \$1,350.00 and arrears of \$175.00 from August which sums he says have still not been paid. The landlord therefore requests an Order of Possession.

With respect to the repairs to the hot water tank the landlord agrees that repairs were required and as soon as the tenants notified him that repairs were necessary he sent the repair person to make repairs. The landlord submits that on one occasion it took 6 days for the repairs to be made because the tenants were not home and not responding to his phone calls to arrange a time for repairs. The landlord says that the tenants have been out of hot water for a total of 10 days in 9 months.

The landlord submitted a letter dated September 14, 2012 from TW at Wagner Heating & Air Ltd., advising that they installed the subject gas hot water tank in the rental unit in 2008. TW stated that after 3 years operation the landlord called him to advise him that the tank was not working. TW says he attended the rental unit the next day and discovered the pilot light was out. TW replaced the thermocouple. Three weeks later he was called again for the same problem. TW says he replaced the thermocouple again as a temporary fix while he researched the problem with the pilot light going out. While he was waiting information from the manufacturer of the tank TW says he received a call that the tank was malfunctioning again and he attended one more time to make another temporary repair to the hot water tank. TW advised that the manufacturer told him that there could be problems with the air inlet on the bottom of the tank and that if the filter gets too dirty the pilot light will go out. TW submits that he then attended the rental unit to clean the filter which he found to be very dusty. In the past 7 months TW says he has had no more calls about the tank so he assumes it has been working properly. TW says that when he attended to make repairs at the rental unit there was often no one home to let him in although he was later informed a key had been left for him he was not made aware that this had been done. TW submits that he always responded to problems either the same day he was informed or the next day.

Findings

The tenants are seeking to cancel a Notice to End Tenancy given for unpaid rent even though they agree they have not paid the rent set out on the 10 day Notice to End Tenancy they are disputing. The tenants submit that they believed they were allowed to withhold their rent because of emergency repairs.

At Section 4(26)(a) the *Residential Tenancy Act* states:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

A tenant's right to deduct all or a portion of the rent would come in the form of an Order of the Director of the Residential Tenancy Branch. The tenants agree that they had no such Order. The tenants did submit that they did not pay the rent because they had emergency repairs, on the matter of the emergency repairs the *Residential Tenancy Act* states:

Emergency repairs

- 33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The tenants have failed to supply sufficient evidence to show that they complied with any of the requirements of Section 33. While the loss of hot water might constitute an emergency repair the tenants have specifically failed to show that they had repairs

made let alone that they had to pay for emergency repairs and that they may have been in a position to withhold any part of their rent under the provisions of Section 33. I find that the tenants have failed to pay their rent and that the landlord does have grounds to end this tenancy as set out on the 10 day Notice to End Tenancy. I therefore decline the tenants' application seeking to cancel that Notice.

When a tenant makes application to cancel a Notice to End Tenancy given for cause and the application is dismissed and the landlord requests an Order of Possession, the landlord is entitled to receive that Order. The landlord is entitled to an Order of Possession effective two days after service. The tenants submitted that they have 5 children and this creates a hardship for them to move so soon. The landlord indicated that the tenants could remain in the rental unit until November 30, 2012 so long as they paid the rental arrears and that they pay rent due for November 2012. The discretion to enforce this Order of Possession lies with the landlord.

While the tenants sought an Order to recover cost of emergency repairs they have submitted no testimonial or documentary evidence with respect to what repairs were made or how much the tenants may have paid for those repairs. This claim is therefore dismissed as unproven.

Finally the tenants have sought a monetary Order for compensation for damage or loss. In this regard I prefer the well documented evidence of the landlord that there were repairs necessary to the hot water tank and that those repairs were made in a timely fashion save for the times the tenants were not available to allow repair persons into the rental unit to make repairs. I therefore find that the tenants have failed to show that they suffered damages or loss for which they should be compensated.

Conclusion

The landlord is provided with an Order of Possession effective two days after service on the tenants. Should the tenants fail to comply with this Order the Order may be enforced as an Order of the Supreme 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: October 11, 2012.

Residential Tenancy Branch

