



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT CNE CNC MNR FF

Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause, for more time to make an application to cancel a Notice to End Tenancy, a monetary order for the cost of emergency repairs, and to recover the filing fee.

The landlords, an agent for the tenant (the “agent”), and a witness for the tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the relevant evidence that was submitted in accordance with the rules of procedure, and testimony provided.

Preliminary and Procedural Matters

The tenant referred to a letter regarding the cost of emergency repairs. The letter was excluded from the hearing as it was not submitted in accordance with the Rules of Procedure.

At the start of the hearing, the agent stated that the tenant intends on vacating the rental unit and as a result, she requested to withdraw the tenant’s application for more time to dispute the Notice to End Tenancy. Given the above, I granted the agent’s request to withdraw that portion of the tenant’s application.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Is the tenant entitled to a monetary order for the cost of emergency repairs?

Background and Evidence

The tenant has applied to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice"), however, failed to submit the Notice as evidence with her application. The agent confirmed that the tenant received the Notice on August 16, 2012 with an effective date of September 16, 2012. Page two of that Notice states that the tenant has the right to dispute the Notice within 10 days of receiving that Notice. The tenant did not dispute the Notice until September 4, 2012.

The agent stated that the tenant is seeking \$2,750.00 for the cost of emergency repairs including \$350.00 to repair a porch, and \$2,400.00 to clean alleged mould from the windows of the rental unit calculated as follows:

10 hours per month @ \$10.00 per hour X 24 months = \$2,400.00

The tenant provided 6 photos which the agent alleges show mould on windows. The agent did not provide any additional evidence regarding the claim for cleaning costs for the alleged mould. The tenant wrote on the back of some of the photos that the photos show the windows after not being cleaned for 1 month. The agent stated that the tenant did not advise the landlord in writing of concerns regarding mould, however, did have verbal discussions regarding the mould. The landlords disputed that the tenant has ever mentioned the existence of mould in the rental unit.

The agent decided not to have the tenant's witness provide oral testimony as a witness during the hearing.

The landlords made a verbal request for an order of possession during the hearing.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

1 Month Notice to End Tenancy for Cause – The tenant confirmed receiving the Notice on August 16, 2012. The tenant failed to provide a copy of the Notice with her application to dispute the Notice. The 1 Month Notice to End Tenancy for Cause document is not a mere technicality. In fact, it is hard to imagine another document being more relevant or material to the tenant's application, in particular when she is asking to have this document cancelled. Based on the oral testimony of the parties, I **find** that the tenant did not dispute the Notice within 10 days in accordance with section 47 of the *Act*.

Section 47 of the *Act* states:

Landlord's notice: cause

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within **10 days after the date the tenant receives the notice.**

(5) If a tenant who has received a notice under this section **does not** make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

[emphasis added]

Based on the above, **I find** the tenant is conclusively presumed pursuant to section 47(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice which indicates September 16, 2012.

Section 55 of the *Act* states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

[emphasis added]

Given the above and taking into account the landlord's oral request for an order of possession during the hearing, **I find** that the landlords are entitled to an order of

possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenant's claim for emergency repairs – The tenant has claimed \$2,750.00 for the cost of emergency repairs to the porch and for alleged mould in the windows over a period of 24 months. Section 33 of the *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.

Given the above, **I find** that a repair to the porch and alleged mould over a period of 24 months does not constitute an emergency repair under the *Act*. The tenant submitted 6 photos which the agent claims to show mould.

Section 7 of the *Act* states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement **must do whatever is reasonable to minimize the damage or loss.**

[emphasis added]

The agent testified that the tenant is claiming \$2,400.00 for the cost of cleaning alleged mould from the windows over a period of 24 months, yet did not provide anything in writing to the landlords advising of the alleged mould, thereby giving the landlords an opportunity to address her concerns. **I find** that the tenant did not minimize the damage or loss by waiting 24 months to file a claim for cleaning costs 2 years after the alleged problem began.

Residential Tenancy Branch Policy Guideline 1 states:

WINDOWS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean windows, in a reasonable state of repair.
2. The **tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy.** The landlord is responsible for cleaning the outside of the windows, at reasonable intervals.

[emphasis added]

Given the above, and based on the photos provided by the tenant, **I find** the tenant has failed to clean the inside windows and tracks during the tenancy, including removing alleged mould as required by Policy Guideline 1. **I order** the tenant to regularly clean the inside of the windows including the removing of any alleged mould. Failure to do so could result in the landlords filing a future claim for damages by failing to clean the windows as required.

The tenant failed to provide any receipts, or other corroborating evidence such as quotes for repair to the porch, photos of the porch, or reports regarding the existence of alleged mould. The photos show a window that is need of cleaning, however, section 32 of the *Act* requires that the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit.

Given the above, **I find** the tenant has failed to meet the burden of proof by not proving that the landlords breached the *Act*, regulation or tenancy agreement. The tenant has also not proven the value of the loss by failing to provide receipts, quotes or other supporting documents. Therefore, **I dismiss** the tenant's claim for compensation for emergency repairs in full due to insufficient evidence without leave to reapply.

As the tenant's application did not have merit, **I do not** grant the tenant the recovery of the filing fee.

Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause.

I grant the landlords an order of possession effective **two days** after service upon the tenant. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I dismiss the tenant's application for a monetary order in full due to insufficient evidence without leave to reapply.

I order the tenant to regularly clean the windows pursuant to Policy Guideline 1 as set out above.

I do not grant the tenant the recovery of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 03, 2012

Residential Tenancy Branch