



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, and ERP

Introduction

This hearing was convened on the tenant's application seeking to have set aside two Notices to End Tenancy, a one-month notice for cause dated August 17, 2012 and a 10-day notice for unpaid rent dated September 5, 2012. The tenant also seeks a monetary award for emergency repairs under section 33 of the *Act*.

As a preliminary matter, section 33 of the *Act* is intended to make provision for a tenant to request an order for emergency repairs or to recover the cost of emergency repairs from the landlord where such was paid for by the tenant when the tenant was unable to contact the landlord to see to the repairs. In the present matter, the tenant has made no such payment and the request is not applicable in these circumstances. Therefore, it is dismissed.

Issue(s) to be Decided

This application now requires a decision on whether either or both notices should be set aside or upheld. As the notice to end for cause was served first, this decision will deal with it and will only address the notice for unpaid rent if the other is set aside.

Background and Evidence

This tenancy began on December 1, 2011. Rent is \$600 per month and the landlord holds a security deposit of \$300.

According to the landlord, this dispute arose over an incident at approximately 3 a.m. on April 3, 2012 in which the tenant's roommate fell asleep while drawing a bath. The tub overflowed, resulting in water intrusion into two other units, one in the floor below the subject unit, and the other a floor below that. The incident set off alarms requiring the strata chair to turn them off.

The landlord submitted a copy of a letter from the strata chair noting that the incident originated in the subject rental unit. In the landlord's diarized submission of events, she reports that the strata chair had attended at the rental unit when the alarms went off and was advised by the tenant's roommate that she had fallen asleep in the tub and it had overflowed. The tenant said he had little or no knowledge of the matter.

In consequence, the strata representative had to call in the alarm company to reset the alarm and to replace two heat sensors the following day.

The landlord's representative submitted into evidence a copy of the service provider's invoice for \$359.18 for the work for.

The copy of the invoice was forwarded to the applicant tenant on April 24, 2012 with a request for payment. The tenant did not reply.

The landlord subsequently posted a 24-hour notice to inspection the rental unit on June 15, 2012, adding to the notice a request that the tenant propose a repayment schedule. When the landlord repeated the request during the inspection, the tenant resisted on the grounds that he was not responsible as the damage was the result of an accident.

The landlord wrote to the tenant again on June 20, 2012 requesting payment and again received no reply.

On August 17, 2012, the landlord again wrote to the tenant including the one-month Notice to End Tenancy for cause, and noting that if the charge was not paid, future rent could be applied to it resulting in a rent shortfall and issuance of a 10-day Notice to End Tenancy for the unpaid rent.

The notice for cause cites the extraordinary damage to the property, failure to repair and breach of a material term not remedied within 30 days of a written notice to do so.

Analysis

I find as fact that the damage resulted from the tub overflowing in the rental unit as claimed by the landlord.

Section 32(3) of the *Act* states that a tenant ...”must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.”

I find that a person permitted in the rental unit by the tenant breached section 47 of the *Act* as set out in the notice to end by causing extraordinary damage to the rental unit and the tenant breached a material term by failing to make remedy within 30 days of written notice to do so.

Section 47(4) and 47(5) of the *Act* permit a tenant 10 days within which to make application to contest a notice to end tenancy for cause, failing which the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice which was September 30, 2012.

As the tenant’s application was made on September 14, 2012, nearly a month after service of the notice, I find that the application is out of time. Therefore, the notice stands and the tenant’s application to have it set aside is dismissed without leave.

On hearing that determination, the landlord requested an Order of Possession pursuant to section 55(1) of the *Act* which compels the issuance of the order on the landlord’s oral request when a tenant’s application to set a notice to end aside is dismissed.

As the end of tenancy date set by the notice, September 30, 2012, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

The landlord, a property manager, stated that she would relay the tenant’s request to propose a repayment schedule to the unit owner, but that she had been instructed to request the Order of Possession.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

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 16, 2012.

Residential Tenancy Branch