



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNR, MNDC, RP, ERP, LRE

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution. The Tenant is seeking an order to cancel a 10 day Notice to End Tenancy for unpaid rent, to cancel a one month Notice to End Tenancy for cause, for the recovery of the cost of emergency repairs, for an order for the Landlord to make emergency and regular repairs to the rental unit, and to suspend or set conditions on the Landlord's right to enter the rental unit.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Should either of the Notices to End Tenancy be cancelled or are they valid?

Is the Tenant entitled to the other relief sought?

Background and Evidence

In the course of this hearing we dealt with the 10 day Notice to End Tenancy for unpaid rent first. Based on the affirmed testimony of both parties, I find that the Tenant was personally served with the 10 day Notice to End Tenancy for non-payment of \$525.00 in rent on November 2, 2012 (the "Notice").

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Tenant applied to cancel the Notice.

The Tenant testified she had to pay for supplies to deal with an alleged bed bug infestation in the rental unit. The Tenant testified that these costs were like having to spend money to make emergency repairs in the rental unit. The Tenant testified she withheld the cost of these supplies from the rent. The Tenant requests a monetary order for the cost of these supplies. The Tenant testified she did not provide evidence to support these claims, such as invoices or receipts, because the Landlord had rushed to serve her with the Notice.

The Agent for the Landlord testified that he served the Tenant personally on November 2, 2012, with the Notice. He testified that the Tenant did not pay rent for November of 2012 and that she also failed to pay rent for December of 2012.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant has not paid all the rent due to the Landlord, and therefore, the 10 day Notice to End Tenancy is valid and should not be cancelled.

Under section 26 of the Act, the Tenant could not withhold rent unless she had an order from an Arbitrator at the Branch allowing her to do so, or, if the Tenant had paid for emergency repairs in accordance with section 33 of the Act.

I find the Tenant had no order, nor did she have any evidence she had paid for emergency repairs. Section 33 of the statute defines what constitutes emergency repairs, for example, major leaks in pipes or the roof. Bed bugs in the rental unit, as alleged by the Tenant, are not included in the definitions of emergency repairs.

This leads me to find the Tenant had no authority under the Act to withhold rent from the Landlord.

I find the tenancy will end in accordance with section 46 of the Act as the Tenant failed to pay rent.

As to the other claims of the Tenant, 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, the Tenant here must prove the following:

1. That the Landlord violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant 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 or loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. 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.

I find the Tenant has insufficient evidence to prove that the Landlord violated the *Act* or tenancy agreement. I further find that the Tenant failed to provide receipts or invoices to verify the value of the loss.

As the tenancy is ending under section 46 of the *Act* it is unnecessary to review the other Notice to End Tenancy, or the other claims of the Tenant, as she must now vacate the rental unit.

Therefore, I dismiss the entire Application of the Tenant without leave to reapply.

Following my dismissal of the Tenants' Application, the Agent for the Landlord requested an order of possession. Under section 55 of the *Act*, I must grant that request.

Therefore, I grant and issue an order of possession effective **two days** after service upon the Tenant. A facsimile copy may be served on the Tenant and if the order has to be enforced in the Supreme Court of British Columbia the Landlord must use the original as sent in the mail.

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 Act.

Dated: December 11, 2012.

Arbitrator
Residential Tenancy Branch