



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR and O

Introduction

This hearing was convened on the tenant's application of December 20, 2012 seeking rent abatement and a rent reduction for loss of quiet enjoyment resulting from the opening of a large retail outlet in August of 2012 next to his rental unit in the mixed residential-commercial complex. The tenant also asked that his application be amended to include a request to set aside a Notice to End Tenancy for unpaid rent posted on his door on December 11, 2012 and setting an end of tenancy date of December 26, 2012.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside or upheld? Is the tenant entitled to an award for rent abatement and rent reduction due to the loss of quiet enjoyment?

Background and Evidence

This tenancy began on November 17, 2011. Rent is \$1,695 per month and the landlord holds a security deposit of \$847.50 paid at the beginning of the tenancy.

As to the Notice to End Tenancy of December 11, 2012, the landlord gave evidence that it had been served after the tenant's cheque for rent due on December 1, 2012 had been returned NSF, a frequent occurrence during the tenancy. The landlord stated that, in the interim, the December rent remains unpaid and the tenant has not paid the rent due on January 1, 2013.

As to the claim for a rent reduction and rent abatement, the parties concur that due to the opening of a large retail outlet adjacent to the rental unit, the tenant has suffered a degree of loss of quiet enjoyment of the rental unit.

However, the landlord (the unit owners' agent) stated that she had been attempting to resolve matters by coordinating cooperation between the tenant, the unit owner and the strata corporation which was dealing with other complaints of noise from the retail outlet.

To that end, she had asked the tenant to specify an amount he sought for the rent rebate/rent reduction with an explanation of the factors taken into account in arriving at the amount claimed.

The tenant had replied that he believed that his loss of quiet enjoyment had diminished the value of the rental unit by \$500 per month, an amount the owner had previously agreed to for a one-month reduction due to construction. The agent stated that she had asked for a description of the nature of the disturbances to assist the landlord in arriving at an amount but the tenant had yet to provide one.

Analysis

With respect to the Notice to End Tenancy for unpaid rent, Section 26(1) of the *Act* provides that:

"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."

I find that the tenant had no right under the *Act*, such as emergency repairs or an order of the director, to withhold rent.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that while the tenant did make application to contest the notice of December 11, 2012, he did not pay the rent within five days of receiving it, it remains unpaid, and the January rent is now overdue as well.

Therefore, I find that the Notice to End Tenancy is lawful and valid. I cannot set it aside. That portion of the application is dismissed without leave to reapply.

On hearing that determination, the landlord requested an Order of Possession under section 55(1) of the *Act* which compels the issuance of the order on the landlord's oral request when an application to set aside a notice to end tenancy is dismissed and the notice is upheld. Accordingly, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on January 31, 2013 as requested by the landlord.

With respect to the tenant's request for rent abatement, he had submitted no evidence with his application, nor to the landlord in response to her request, of such information as the severity, frequency, duration and impact of the disturbance to assist the landlord in assessing fair monetary compensation.

For that reason, and because the landlord anticipates filing a claim for the unpaid rent now totaling \$3,390, and because there appears to remain a chance of the parties arriving at a settlement, I dismiss this portion of the tenant's application with leave to reapply.

Conclusion

The tenant's request to set aside the Notice to End Tenancy is dismissed without leave to reapply. The tenant's request for rent abatement is dismissed with leave to reapply.

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 at 1 p.m. on January 31, 2013.

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: January 24, 2013

Residential Tenancy Branch

