



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, RR

Introduction

This hearing dealt with an application filed by the tenant seeking to cancel a Notice to End Tenancy given for unpaid rent and seeking to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties appeared and gave evidence under oath.

Issue

Should the Notice to End Tenancy be cancelled? Should the tenant's rent be reduced for repairs, services or facilities agreed upon but not provided?

Background, Analysis and Findings

This tenancy began in September 2012. The parties agree that the landlord served a Notice to End Tenancy for unpaid rent on January 11, 2013. The Notice which was filed in evidence shows that the landlord was seeking rent due January 1, 2013 in the sum of \$1,300.00. The landlord testified that not only is January's rent still outstanding but February's rent is now outstanding as well. The landlord requested an Order of Possession.

The tenant objected to the landlord's request for an Order of Possession. The tenant stated that he tried to pay the rent but the landlord refused to accept payment. The tenant also stated that he has not paid his rent because he has made some 10 appointments with the landlord to have repairs done but the landlord has failed to attend these appointments and make the repairs. The tenant stated that he requires repairs to a toilet and a shower head.

The landlord stated that the tenant sent an email this past Sunday (February 10, 2013) advising that he wished to pay the rental arrears to settle the matter and reinstate the tenancy. The landlord stated that this tenancy began in September 2012 and by December the tenant's rent was 3 months in arrears. The landlord said he agreed at

that time to accept payment of the arrears and continue the tenancy on the promise that the tenant would pay his the rent on time in future. The landlord testified that despite this promise the tenant's rent due January 1, 2013 was not paid and the landlord issued a 10 day Notice to End Tenancy. The landlord reiterated that February 1st rent is now also outstanding. The landlord requested an Order of Possession and a monetary award for the unpaid rent.

The tenant testified that his rent for February was not paid because he filed this application in January.

Background and Findings

I accept the evidence of both parties.

With respect to the tenant's evidence that he did not pay the rent because the landlord had refused to do repairs, even if this were the case Section 26(1) of the *Residential Tenancy Act* states:

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.

Therefore if a tenant does not pay rent and does not have a right under the Act to deduct all or a portion of the rent a landlord may issue a 10 day Notice to End Tenancy for unpaid rent. Once served with that Notice a tenant has 5 days within which to pay the rent or make an application seeking to dispute the Notice. Tenants may dispute a Notice when they have proof that the rent was paid, when they have an Order from an Arbitrator giving them permission to keep all or part of the rent or when they have held all or a portion of the rent with prior notice to the landlord for the cost of emergency repairs.

While the tenant did make an application seeking to dispute the Notice within the proper time frame, the parties agree that the rent requested in the Notice remains outstanding. In fact, the evidence shows that further rental arrears have now accrued. There has been insufficient evidence that the tenant has an Order allowing him to withhold his rent or that he has paid for emergency repairs and taken the steps required to deal with emergency repairs as set out in Section 33 of the *Residential Tenancy Act*.

While the evidence of both parties is that the tenant offered to make payment of all arrears on February 10, 2013 this was past the 5 day time limit provided in the Act to make payment which would reinstate the tenancy. Finally, while the tenant submitted that February's rent was unpaid because he had made this Application, except as set out above, there are no acceptable reasons for a tenant to withhold his rent and filing an application to dispute a Notice to End Tenancy does not allow a tenant to withhold future rents while awaiting a hearing. In the end, the evidence is clear that the tenant has not paid his rent and I will therefore dismiss his application seeking to cancel the Notice to End Tenancy given for unpaid rent.

The landlord has requested an Order of Possession, Section 55(1) of the *Residential Tenancy Act* states:

- 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.

As an oral request for an Order of Possession has been made and as I have dismissed the tenant's application seeking to cancel the Notice to End Tenancy, I will issue an Order of Possession effective 2 days after service on the tenant.

The landlord also requested a monetary Order to recover the rental arrears. This hearing was held in response to an application filed by the tenant. I have no application before me from the landlord that I may consider I must therefore decline this request. However the landlord remains at liberty to make his own application.

With respect to the tenant's application seeking to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided, the tenant has made no submissions in this regard. Further, as this tenancy is ending, this claim is dismissed.

Toward the end of this hearing the tenant insisted he had more evidence to present which the Arbitrator was refusing to hear. Despite several requests for the tenant to make his submission the tenant refused. The tenant stated that there was no point in

presenting evidence because the Arbitrator was biased. The tenant submitted that he preferred to take the matter up with the Arbitrator's supervisor and the Supreme Court.

Conclusion

The landlord is provided with a formal copy of an Order of Possession. This is a final and binding Order as any 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: February 12, 2013

Residential Tenancy Branch

