



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR RP ERP RR PSF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46 and to allow the rent reduction as agreed by the parties;
- b) To do emergency and necessary repairs pursuant to sections 32 and 33;
- c) To allow the tenant to reduce rent for repairs not done and for facilities not provided;
- d) To set conditions on or suspend the landlord's right to enter the rental unit;
- e) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated April 14, 2013 to be effective April 26, 2013 and the tenant confirmed receipt. The landlord gave evidence that she served the Application for Dispute Resolution by posting it on the door which I find is not an acceptable method of service under section 89 to obtain a monetary order. The landlord confirmed receipt of the tenant's Application by registered mail.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent and so sufficient cause to end the tenancy or has the tenant demonstrated that the notice to end tenancy for unpaid rent should be set aside and the tenancy reinstated? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that repairs are necessary and that the landlord is entering the rental property illegally?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced on March 1, 2013 at a rent of \$1800 a month and a security deposit of \$900 was paid on February 7, 2013. The landlord served a Notice to End Tenancy

because the tenants are deducting \$200 a month from the rent stated on the lease. She has received \$1600 rent from the tenants each month both before and after the Notice was served. She said she did not know that she was invalidating her notice if she did not provide a receipt or note that she was accepting the rent with the limitation that it was "for use and occupancy only". She claims \$600 in rent owing.

The tenants state that there was an agreement written on the back of the lease that certain repairs were to be done and other things completed before they moved in but when the listed items were not done, the landlord agreed to a \$200 rent reduction. In evidence is a copy of the back of the lease. The handwritten page lists items noted in a walk through but I find it does not state that these items are to be repaired except for noting that the back wall of the basement is to be insulated after finishing electrical. At the bottom of the page is written "Reduced rent for March by \$200 for delayed flooring renos. Rent April \$1800". The landlord said the floors had been finished and the tenant did not complain about them in the hearing.

This was a contentious hearing as the relationship between the parties has deteriorated and they are close neighbours. The landlord left a number of items in the storage area of the basement and the tenant estimates that about 250 sq. ft. is occupied by the landlord's items. A number of photographs are submitted as evidence. The landlord contended that these were all items that belonged to the house as they were purchased for renovations on it. Some items were also stored in the garage but were removed on April 18, 2013.

The tenant is concerned about the bare wires and the insulation and drywall that have not been replaced in the storage room. The tenant said the floors are very cold because of the missing insulation. The landlord said that due to enquiries by the tenant, Safety BC has given her until June 30, 2013 to bring the wiring to code although they said there was nothing dangerous. The City allowed her to store some parts of a partial kitchen in the storage room. It is a 2800 sq. ft. house and the majority of it has been renovated, the storage area was not designed to be finished and is about one third of the basement. The landlord said that only paint for touch up is now in the room.

Another source of contention is the driveway which goes to the tenants' back door but also goes to a shop at the back of the property. The tenants say it is used like a laneway, exclusive use is not in the lease but they are required to do snow removal on it. The landlord said they are not required to do snow removal on it except on their own garage area as the shop owner has a bob cat and will do that. She pointed out that the lease states there is parking for two cars and this indicates that exclusive use of this laneway area was not included in the rental property. The tenants also complain that

the landlord accessed the property twice and left the garage door open but they conceded this should no longer be a concern as she has removed the items from the garage. They ask that the landlord be required to provide the legal 24 hour notice of entry which is outlined in section 29 of the Act. She has been giving short notices.

The tenants were also concerned about the irrigation system. In the hearing, it was established that it is an automatic system and the landlord will come with the installer and turn it on probably this weekend. The tenants also allege the landlord is overcharging them for the City water utility based on what they read on the website. The landlord said their rate is based on an orchard, not residential rate. She agreed she would provide complete copies of the utility bill to the tenant in future. I decline to deal with this item further as the parties should be able to determine correct amounts if copies of bills are provided.

The tenant also complained of the broken eave trough on the house, the dirty windows and the dirty ramp into the storage room. The landlord said that she had tried to fix the eave trough but needs professional help. She said cleaning the windows was a tenant responsibility under the Act and the ramp is a grass ramp into the basement left from days when wood was brought down and there are some lilac leaves on it. She said the tenants could rake that grass if they wanted but it is not the landlord's responsibility.

The tenants also said that they urgently needed keys for two bedrooms which can be locked. They are concerned that their children will accidentally lock these doors.

Included with the evidence is the Notice to End Tenancy, a lease with a handwritten page from the back of it, character reference letters stating the landlord is a good landlord in the opinion of other tenants and several emails about leaving the garage door open the one filed by the tenant having unchecked boxes on the second page and the other having the boxes checked, a copy of a lease, four letters from tenants as detailed above and a letter from a lawyer proposing a settlement which the tenants refused. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

I find that the Application for Dispute Resolution was served according to section 89(2) which would entitle the landlord to an Order of Possession if she proved entitlement. I find that she proved there are arrears of rent but she continued to accept rent after she served the Notice to End Tenancy without limiting her acceptance for use and occupancy only. Thereby she reinstated the tenancy. Although the landlord said she did not understand this, it is a principle of law that if you end a contract, you risk

reinstating the contract if you continue to accept payment without a limitation. Therefore, I dismiss her application for an Order of Possession with leave to reapply if there is a necessity to issue another notice for non payment or partial payment of rent.

In respect to a monetary order for rental arrears, I find she did not serve the Application personally or by registered mail on the tenants which are the accepted methods under section 89(1). Therefore, I dismiss her application for a monetary order with leave to reapply.

In respect to the tenants' claims, I find the weight of the evidence is that their rent was reduced \$200 for only one month as the wording on the back page of the lease states this and the landlord said she made this concession reluctantly for the floors were not quite finished but they are finished now. I find the tenants owe \$1800 in rent each month unless an arbitrator orders a reduction in rent. They are not entitled to reduce or withhold their rent without consent or order whether or not a landlord is complying with their obligations (see s. 26 of the Act).

Concerning storage in the home, I find that the landlord was occupying about 250 sq. ft. of unfinished space in the home with her items; I find they do not belong to "a house" as she said, they were her items to be used for renovation. As they occupied the home for part of April as well as March, I grant the tenants' a one time rebate of \$150 for loss of some storage space which would mean their rent for April was \$1650, not \$1800. Concerning the issue of the missing keys, I find the landlord must either supply the keys to the two bedrooms or replace the knobs with non locking ones.

Concerning their complaints, I find their lease does not grant them exclusive use of the driveway/laneway and this is supported by the fact that they are granted parking for two cars only. I find that there are some safety concerns about the electrical wiring and this is to be fixed to code by June 30, 2013. I find the photographs and evidence credible that there was insulation and drywall on certain places in the storage room and that the electrical wiring requires work; this is supported by the hand written notes on the back of the lease. Therefore the landlord will be ordered to have the insulation and drywall replaced by July 15, 2013 or as soon after the electrical work is completed as possible. I find the landlord responsible to repair the eave of the house also.

I find that the tenants are responsible for cleaning the windows and clearing the ramp of leaves and debris as part of their obligation to maintain the property.

Conclusion:

I find there is no outstanding rent for April (based on granted rebate above of \$150) and a credit of \$50 to be applied to May 2013. I find the tenants then owe \$150 for May 2013. As the landlord did not serve the application in accordance with section 89(2) of the Act, I dismiss her claim for a monetary order with leave to reapply should the tenants not pay rent in accordance with their lease or should they not pay the \$150 owed for May rent..

I dismiss the landlord's application for an Order of Possession for the reasons stated above as she invalidated her Notice to End Tenancy by accepting further rent payments without limitation on her acceptance. I find her not entitled to recover filing fees on this application as she was unsuccessful, mainly due to error. **The tenancy is reinstated.** I find the tenants entitled to the orders below. I find them not entitled to recover their \$50 filing fee as they are in arrears of rent and were relying on deducting rent contrary to section 29 of the Act. I dismiss the other claims of the tenants.

I HEREBY ORDER THAT THE LANDLORD DO THE FOLLOWING BY JULY 15, 2013:

- 1) COMPLETE ELECTRICAL WIRING REPAIRS TO CODE**
- 2) REPLACE THE INSULATION AND DRYWALL THAT IS IN THE STORAGE ROOM**
- 3) REPAIR THE EAVES TROUGH OF THE HOUSE ; AND**
- 4) SUPPLY KEYS TO THE TWO BEDROOM DOORS OR REPLACE THOSE LOCKS WITH UNLOCKED KNOBS.**

IF THE LANDLORD DOES NOT COMPLY WITH ANY PART OF THIS ORDER, I HEREBY ORDER THAT THE TENANT MAY REDUCE THEIR RENT PAYMENT BY \$50 FOR AUGUST 1, 2013 AND SUBSEQUENT MONTHS UNTIL THESE ITEMS ARE COMPLETED.

I HEREBY ORDER THE LANDLORD TO COMPLY WITH SECTION 29 OF THE ACT AND PROVIDE AT LEAST 24 HOUR NOTICE OF ENTRY.

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*.

Residential Tenancy Branch