



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Lakeside Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPR, MNR, MND MNSD and FF

Tenant: CNR, MNR, MNDC, MNSD, ERP, RP,
PSF, RR, FF, and O and FF

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of July 23, 2013, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on June 23, 2013. The landlord also sought a monetary award for the unpaid rent, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed. As damage to the rental unit cannot be claimed until the tenancy has ended, that part of the landlord's application is dismissed with leave to reapply.

By application received on June 28, 2013 and amended on July 3, 2013, the tenants sought to have the Notice to End Tenancy set aside. The tenants also sought a variety of remedies pertaining to repair of water intrusion into the bathroom and monetary compensation for repairs and inconvenience associated with that situation.

Clause 2.3 under the Residential Tenancy Branch Rules of Procedure provides that:

"If, in the course of the dispute resolution proceedings, the [arbitrator] determines that it is appropriate to do so, the [arbitrator] may dismiss unrelated disputes contained in a single application with or without leave to reapply."

In the present applications, I find that the issue of unpaid rent is paramount. I find that the landlord's claim for damage to the rental unit is premature and the tenants' claims for various repairs are sufficiently removed from the issue of rent that they should be dismissed with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession in support of the Notice to End Tenancy for unpaid rent of June 23, 2013 be support with an Order of Possession or set aside as requested by the tenant.

Background and Evidence

This tenancy began on December 15, 2012. Rent is \$650 per month and the landlord holds a security deposit of \$325 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of June 23, 2013 had been served when the tenants had not paid the \$650 rent that was due on June 1, 2013. In the interim, the tenants remain in the rental unit, the June rent remains unpaid and the tenants have not paid the rent for July or August 2013. The latter was due on the day of the hearing and the attending tenant stated that she was prepared to pay it.

The tenant gave evidence that she believed she had the landlord's approval to defer the June rent in order to redirect the funds to repair of the bathroom which had suffered damage due to leaking from the rental unit above.

The tenant stated that the work had been completed on July 28, 2013 and that she had been invoiced \$708.06 for the work. She stated that she had submitted documentary evidence and photographs, but those had not arrived at the branch by the time of the hearing.

The landlord stated that she had not approved the contract and noted that it was done by the tenant's father at a rate of \$85 per hour which she stated is substantially above local norms. The tenant stated that her father is highly qualified and works doing full service, multi-trade repairs on recreational vehicles.

The landlord stated that she valued the work at \$318.04 based on \$25 per hour.

The tenant stated that the work had been required for some time and claims the provisions for emergency repairs under section 33 of the *Act*. The landlord acknowledged that there had been ongoing problems of leaks from the bathroom in the unit above the subject unit and that she had a plumber attend on several occasions. She said that problem has now been remedied making the way clear to do the remediation in the subject unit. However, she said the water intrusion was not in a pressure line and was not an emergency repair.

She said she had texted the tenants on June 7, 2013 asking for the overdue June rent. When she had not heard from them, she attended the rental unit on June 11, 2013, the tenants showed her wet insulation and ceiling tiles from continued leaking. She authorized the male tenant to remove the tiles and insulation and asked them to provide a written quotation from the female tenant's father as they had proposed his services.

She stated that she told the tenants that day that they still had to pay the rent for June 2013. When she did not receive the rent, the landlord attended the rental unit on June 23, 2013 and served the Notice to End Tenancy.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due whether or not the landlord is in compliance with the *Act*.

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 tenants 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 the tenants did not pay the rent within five days of receiving the notice.

While the tenants have submitted that withholding rent is justified on the basis of the emergency repairs.

However, as to the rent due on June 1, 2013, I find there was no emergency at that time, and the landlord had not authorized the tenants to redirect rent for repairs, and had, in fact specifically directed that the repairs be billed directly.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenants.

I further find that the landlord is entitled to a Monetary Order for the \$650 rent for June 2013. However, given the probability of the tenants' application for repairs which the landlord contests as to amount but not as to fact, I decline to award the rent for July 2013. The tenant's claim approximates the value of the rent, and it remains possible the parties may be able to come to agreement on amounts. Similarly, I decline to award rent or loss of rent for August 2013 as the promised to make payment on the due date and, having issued the order of possession, I cannot predict with certainty when the tenants will vacate and how much might be owed.

Therefore, the landlord remains at liberty to make application for the unpaid rent beyond June 2013 and any other damages or losses as may be ascertained at the conclusion of the tenancy.

I find that the landlord is entitled to retain the security deposit in set off against the balance owed.

I decline to award the filing fees as I find the delays in completing repairs contributed to this dispute.

Thus, I find that the landlord is entitled to a monetary award calculated as follows:

Rent for June 2013	\$650.00
Less retained security deposit (no interest due)	- 325.00
TOTAL	\$325.00

Conclusion

The tenants' application is dismissed with leave to reapply on those issues that remain relevant after the tenancy has ended.

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 tenants.

In addition to authorization to retain the security deposit in set off, the landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$325.00** for service on the tenants.

The landlord remains at liberty to make application for remain rent arrears and any further damage or losses ascertained at the end of the tenancy.

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: August 01, 2013

Residential Tenancy Branch

