



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR; MNDC; MNR

Introduction

This is the Tenant's application to cancel a Notice to End Tenancy for Unpaid Rent; compensation for damage or loss under the Act, regulation or tenancy agreement; and the cost of emergency repairs.

The hearing process was explained and the participants were asked if they had any questions. The parties gave affirmed testimony at the Hearing and were provided the opportunity to be heard, present evidence and to make submissions.

It was determined that the Tenant served the Landlord with the Notice of Hearing package by registered mail.

Issues to be Decided

- Should the Notice to End Tenancy be cancelled?
- Is the Tenant entitled to monetary compensation?

Background and Evidence

A copy of a tenancy agreement was provided in evidence. The tenancy began on October 15, 2012, and is a term lease set to expire on September 14, 2013. This rental unit is subsidized. The economic rent is \$845.00. Current subsidized rent is \$550.00 per month. The Tenant also pays the Landlord \$23.00 a month for cable services. The Tenant paid a security deposit in the amount of \$300.00 on October 4, 2012.

The Landlord issued a 10 Day Notice for Unpaid Rent on July 2, 2013 (the "Notice"). A copy of the Notice was provided in evidence. The Landlord testified that the Tenant paid only \$73.00 on July 1, 2013 and provided the Landlord with an invoice for surveillance in the amount of \$500.00. The Tenant did the same thing for August rent.

The parties agreed that the Tenant received the Notice on July 3, 2013.

The Tenant testified that he notified the Landlord on June 17, 2013, that he would be “solving the Landlord’s problem” with drug dealing and prostitution at the rental property and would be withholding \$500.00 in rent pursuant to the provisions of Section 33 of the Act.

The Tenant stated that he told the Landlord in May, 2013, that he would move if the Landlord did not stop the drug dealing and prostitution in the rental property. The Tenant testified that he moved out of the rental unit on July 30, 2013, but still has the keys. He stated that he notified the Landlord in writing by giving his notice in the Landlord’s mail box.

The Tenant stated that the Landlord ignored unsafe situations in the rental property that were identified by the Tenant. The Tenant testified that he wrote 14 pages of complaints and security reports, all of which the Landlord ignored. The Tenant stated that he wants to be paid security fees for his work in doing the Landlord’s job and making the rental unit a safer place.

The Tenant stated that his downstairs neighbour is a crack head and has kicked in the Tenant’s door and threatened the Tenant. He testified that police were called occasionally since April, 2013, but no arrests have been made. The Tenant believes that a complaint from another tenant in the building would mean something.

The Tenant began to quote several Sections of the Act. I advised the Tenant that I would consider his documentary evidence, including the Details of Dispute in his Application for Dispute Resolution, and that it was not necessary to quote all of the Sections of the Act on which he was relying because he had provided them to me in his Application.

The Landlord stated that he was skeptical about whether or not the Tenant has actually moved out of the rental unit. He testified that he had not received any written notice from the Tenant.

At this point, the Tenant laughed and abruptly left the call. He did not sign back into the teleconference, although the conference remained open for another 15 minutes.

The Landlord testified that he investigated the Tenant’s allegations by speaking to other occupants in the building. He stated that he and the building manager also did surveillance of the building at night, but could find no grounds for the Tenant’s allegations that the downstairs neighbour was dealing drugs from the rental property.

The Landlord stated that the downstairs neighbour complained about the Tenant and said that he was constantly video recording him while he was sitting in his garden. The Landlord stated that he spoke to the Tenant and told him to call the police if he feels unsafe. The Landlord testified that the Tenant has called the police, but the police have taken no action. The Landlord testified that he went to the Tenant in July, 2013, to tell him that the Landlord has 25 other properties and would be interested in relocating the Tenant if he was interested.

The Landlord asked for an Order of Possession.

Analysis

Section 26 of the Act states:

Rules about payment and non-payment of rent

- 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.

Section 33 of the Act states:

- 33** (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, **and**
 - (c) **made for the purpose of repairing**
 - (i) **major leaks in pipes or the roof,**
 - (ii) **damaged or blocked water or sewer pipes or plumbing fixtures,**
 - (iii) **the primary heating system,**
 - (iv) **damaged or defective locks that give access to a rental unit,**
 - (v) **the electrical systems, or**
 - (vi) **in prescribed circumstances, a rental unit or residential property.**
- (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

(emphasis added)

In this case, the Tenant submits that he withheld rent under the provisions of Section 33(7) of the Act. He submits that he had to provide surveillance and security services because the Landlord was not doing so; that he provided the Landlord reasonable time to provide these services; and that he provided the Landlord with a written account for his services.

I find that the Tenant's services do not fall within the definition of emergency repairs as defined under Section 33(1) of the Act, and that the Tenant had no right under the Act to withhold or deduct rent. Therefore, I find that the Tenant did not pay rent when it was due and that the Notice is a valid notice to end the tenancy. The Tenant's application to cancel the Notice is dismissed. **I find that the tenancy ended on July 13, 2013.**

Section 55 of the Act states:

Order of possession for the landlord

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.

Pursuant to the provisions of Section 55 of the Act, I hereby provide the Landlord with an Order of Possession **effective 2 days after service of the Order upon the Tenant.**

With respect to the Tenant's monetary claim, I find that he provided insufficient evidence to support his claim. I have found that the Tenant's surveillance work does not meet the definition of "emergency repairs". Other than the Tenant's own security reports and oral testimony, there is no corroborative evidence that drug dealing or prostitution is taking place at the rental property. The Tenant stated that the police have been called and attended the rental property, but no charges have been laid. The Tenant provided no evidence from any other occupant in the rental property to substantiate his allegations. I accept the Landlord's testimony that he and the building manager have both investigated the Tenant's concerns and have not found any evidence of drug dealing or prostitution at the rental property. Therefore, this portion of the Tenant's claim is also dismissed.

Conclusion

The Tenant's application is **dismissed**.

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant.** This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 07, 2013

Residential Tenancy Branch