



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, MNDC, ERP, RP, OPR, MNSD, FF

Introduction:

This was an application by the tenants to cancel a Notice to End the Tenancy dated September 4, 2013 for non-payment of rent, an Order to make emergency repairs, compensation for the emergency repairs, and compensation for failure to make the emergency repairs. The landlords have applied for a monetary Order and an Order for Possession for unpaid rent. All parties were in attendance and all admitted service of their applications. The tenants clarified that they were actually requesting compensation for the reduction in value of the rental unit or other compensation because of the mould rather than the cost of emergency repairs. I have amended their application accordingly.

Issues:

Were emergency repairs required?
Were the tenants entitled to withhold rent?
Are the tenants entitled to compensation?
Are the landlords entitled to an Order for Possession and monetary Order?

Background and Evidence:

I determined at the beginning of the hearing that most of the applications made by the tenants other than to cancel the Notice to End the Tenancy were not related to Application to cancel the Notice or the landlords' applications. I advised the parties that I would only proceed with the tenants' application to cancel the Notice to End the Tenancy and the landlords' applications.

Based upon the evidence of the landlords, I find that the Notice to End a Residential Tenancy was served in person on the tenants on September 4, 2013.

The landlords testified that the tenancy began on July 1, 2013 with rent in the amount of \$ 1,200.00 due in advance on the first day of each month. The tenants paid a security deposit of \$ 600.00 on June 25, 2013. The landlords testified that the tenants did not pay any rent for September or October 2013.

The tenant B.B. initially testified that the landlords refused to take the rent but later in the hearing admitted that the rent was withheld because a mould infestation caused them to have health and safety concerns. They had not produced any expert evidence but testified that they were prohibited by the landlords to bring experts to the unit to inspect it.

Analysis:

Rule 2.3 of the Rules of Procedure states:

2.3 Dismissing unrelated disputes in a single application

If, in the course of the dispute resolution proceeding, 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.

The tenants indicated several matters of dispute not related to the main issue being the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on the tenants' application are sufficiently related to the main issue to be dealt with together. Therefore, I only considered the tenant's request to set aside or cancel the Notice to End Tenancy for nonpayment of rent, the tenant's application for compensation for emergency repairs, an Order to compel emergency repairs, the landlords' applications for an Order for Possession and a monetary Order for unpaid rent and I dismissed the balance of the tenants' claims with liberty to re-apply.

The Notice to End a Residential Tenancy is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Pursuant to section 33 of the Act a tenant has a right to withhold rent if the tenant pays for emergency repairs. Emergency repairs are defined as:

Emergency repairs

- 13. (1)** In this section "emergency repairs" means repairs, that are urgent and necessary for the health and safety of persons or the preservation and use of the residential property or residential premises, to
- (a) major leaks in the pipes or roof,

- (b) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (c) the central or primary heating system,
 - (d) defective locks that give access to the residential premises, or
 - (e) in prescribed circumstances, the residential premises or residential property.
- (3) If emergency repairs are not made within a reasonable time after a tenant has made a reasonable effort on 2 or more occasions to contact the person at the telephone number referred to in subsection (2), the tenant may have repairs made, but the landlord may take over completion of those repairs at any stage.
- (4) A landlord must reimburse a tenant for the tenant's expenses under subsection (3) except expenses that the court, on application, finds to be
- (a) not for emergency repairs,
 - (b) for emergency repairs for which the tenant failed to comply with subsection (3) or (5),
 - (c) beyond a reasonable cost for the emergency repairs, or
 - (d) for emergency repairs the need for which arises primarily from the actions or neglect of the tenant or a guest of the tenant.

Here the tenants testified that they have not made any repairs nor expended any monies at all. They allege that the house was infested with mould making them ill, and therefore they had a right to withhold their rent. Unfortunately for the tenants the Act does not permit tenants to withhold rent unless they have actually paid for emergency repairs. The Act requires the tenants to either apply for permission to reduce the rent or compel the landlords to make repairs. Here the tenants only made such applications after they withheld their rent and had not made any repairs. For the aforementioned reasons I must dismiss the tenants' application to cancel the Notice to End the Tenancy. I have also dismissed their applications to compel emergency repairs and for compensation for emergency repairs. For the reasons I stated at the outset of the hearing I have dismissed with leave the tenants' other applications for compensation for mould or reduction in rent for mould as they are not sufficiently related and as the tenants had not been able to adduce evidence.

I Order that the landlords grant the tenants continued generous and reasonable access to the unit even after they vacate to inspect and document any evidence of mould and bring with them any third parties as they may determine necessary. The tenants must give the landlords at least 24 hours prior notice.

Based on the above facts, the landlords' evidence and tenants' admission I find that the landlords are entitled to an order for possession effective two days after service on the tenants. This order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlords have established a claim for unpaid rent totalling \$ 2,400.00 for the month(s) of September and October. The landlords are entitled to recover the \$50.00 filing fee for this application for a total claim of \$ 2,450.00. I order that the landlords retain the deposit and interest of \$ 600.00 and I grant the landlords an order under section 67 for the balance due of \$ 1,850.00.

Conclusion:

I granted the landlords an Order for Possession. Should the tenants fail to comply with this Order, the landlords may register the Order with the Supreme Court of British Columbia for enforcement. I granted the landlords a Monetary Order in the amount of \$ 1,850.00 and that Order may be enforced in the Small Claims Court of BC. I have dismissed the tenant's applications to cancel the notice to End the Tenancy, to compel emergency repairs or repairs and for any compensation for emergency repairs. I have dismissed with leave to reapply all of the tenants' other applications. I Order that the landlords grant the tenants continued generous and reasonable access to the unit even after they vacate to inspect and document any evidence of mould and bring with them any third parties as they may determine necessary. The tenants must give the landlords at least 24 hours prior notice. The tenants will not recover their filing fee. This Decision and all Orders must be served on the tenants as soon as possible.

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: October 21, 2013

Residential Tenancy Branch

