



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes:

Tenants' application (filed September 30, 2013): MT; CNR; ERP; RP; MNDC; MNR; FF

Landlord's application (filed October 3, 2013): OPR; MNR; MNSD; MNDC; FF

Introduction

This Hearing was convened to consider cross applications. The Tenants seek more time to file an application to cancel a 10 day Notice to End Tenancy for Unpaid Rent issued September 25, 2013 (the "Notice"); to cancel the Notice; for Orders that the Landlord make emergency and regular repairs to the rental unit; compensation for damage or loss under the Act, regulation or tenancy agreement; for recovery of the cost of making emergency repairs to the rental unit; and to recover the cost of the filing fee from the Landlord.

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent and utilities; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of the Landlord's monetary award; and to recover the cost of the filing fee from the Tenants.

Both parties gave affirmed testimony at the Hearing.

Preliminary Matters

1. The Tenants' application for more time to file an application to cancel the Notice

The Landlord's counsel advised that the Notice was hand delivered to the Tenants on September 25, 2013. The Landlord provided an affidavit of service of the Notice in evidence.

The Act requires a tenant to file an application to cancel a notice to end the tenancy for unpaid rent within 5 days after receipt of the notice. In this case, the Tenants' application was filed on September 30, 2013, which is within the allowed time frame. Therefore this portion of their application is not necessary and is dismissed.

2. Service of documents

The Landlord's counsel testified that the Tenants were served with the Landlord's Notice of Hearing documents on October 8, 2013, by mail, and with copies of the Landlord's documentary evidence, by process server, on November 13, 2013. The Landlord did not provide proof of service of the Notice of Hearing documents or the documentary evidence.

The Tenants testified that they served the Landlord with their Notice of Hearing documents by registered mail, sent on October 2, 2013. The Tenants provided the tracking number for the registered documents. They testified that they sent copies of their documentary evidence to the Landlord by priority post on November 14, 2011.

The Tenants stated that they did not receive the Landlord's Notice of Hearing documents until they received the Landlord's documentary evidence. They also testified that they were served on November 14, 2013, and not on November 13, 2013, as claimed by the Landlord. The Tenants stated that they did not have sufficient time to consider the Landlord's documentary evidence or to file rebuttal evidence. The Tenants sought an adjournment.

Applicants are required to serve respondents with the Notice of Hearing documents within 3 days of picking up the Notice of Hearing package from the Residential Tenancy Branch. In this case, the Tenants state that they did not receive the Notice of Hearing and a copy of the Landlord's Application for Dispute Resolution until they were served with the Landlord's documentary evidence on November 14, 2013.

Applicants are also required to serve respondents with copies of the documents on which they intend to rely as soon as possible, but in any event at least 5 clear days before the hearing date. The Landlord provided more than 50 pages of documents and the Tenants provided more than 25, less than a week before the Hearing date. Neither party offered an explanation for delaying the service of documents.

I determined that we would proceed with the Tenants' application to cancel the Notice to End Tenancy and that the remaining portion of the Tenants' application and the Landlord's application is adjourned to the date and time provided in the enclosed Notice of Reconvened Hearing.

Issue to be Decided

Should the Notice to be canceled?

Background and Evidence

The parties agreed on the following facts:

- The Tenants received the Notice on September 25, 2013.
- This tenancy started on March 15, 2013. Monthly rent is \$3,900.00, due on the first day of each month. The Tenants paid a security deposit on March 11, 2013, in the amount of \$1,950.00.
- The Tenant has not paid rent for the months of July, August, September, October or November, 2013.
- At a previous hearing on August 19, 2013, the Landlord agreed that the Tenant could apply July and August, 2013 rent towards various repairs to the rental unit.

The Tenants gave the following testimony:

The Tenants submitted that the Landlord met with the Tenants on June 28, 2013, and agreed that the Tenants could pay a reduced rent because 2/3rds of the rental unit was not habitable due to flooding. They testified that the reduced rent would be backdated to April, 2013, and that the Landlord agreed that they didn't have to pay any rent until the rent abatement was satisfied in December, 2013.

The Tenants testified that they paid \$7,500.00 to their contractor for work performed at the rental unit.

The Landlord's agent and counsel gave the following submissions and testimony:

The Landlord's agent testified that he was aware that the Tenants met with the Landlord on several occasions, but that the Landlord did not tell him about an agreement for reduced rent. He stated that the Landlord's English was not good enough to make that kind of an agreement, and that no such agreement was made.

The Landlord's counsel submitted that the Tenants provided no documentary evidence to support their allegations that they had paid \$7,500.00 to their contractor, or that any agreement had been made for reduced rent.

The Landlord's agent asked for an Order of Possession effective December 31, 2013.

Analysis

Section 26 of the Act requires a tenant to pay rent when it is due whether or not the landlord complies with the Act, regulation or tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Section 33 of the Act provides:

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.

In this case, I find that the Tenants did not provide sufficient evidence that they provided the account and receipts for the repairs as required under Section 33(5)(b) of the Act and therefore they have not established that they have a right under the Act to withhold the rent under Section 33(7) of the Act. I find that the Notice is a valid notice to end the tenancy and dismiss the Tenants' application to cancel it.

Section 55(1) 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.

Therefore, further to the provisions of Section 55(1) of the Act, I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., December 31, 2013.**

The tenancy is ending and therefore, the Tenants' application for Orders that the Landlord make emergency and regular repairs to the rental unit is dismissed. The Landlord has been provided with an Order of Possession and therefore, that portion of the Landlord's application is also dismissed.

The remainder of the parties' applications are adjourned to the date and time provided in the enclosed Notice of Reconvened Hearing. Neither party is required to serve the other with a copy of the enclosed notice.

Conclusion

I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., December 31, 2013**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The following portions of the parties' applications are adjourned to the date and time provided in the enclosed Notice of Reconvened Hearing:

- The Tenants' application for compensation for damage or loss under the Act, regulation or tenancy agreement; for recovery of the cost of making emergency repairs to the rental unit; and to recover the cost of the filing fee from the Landlord.
- The Landlord's application for a Monetary Order for unpaid rent and utilities; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of the Landlord's monetary award; and to recover the cost of the filing fee from the Tenants.

This interim 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: November 25, 2013

Residential Tenancy Branch

