



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LAKESIDE LAND DEVELOPMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, CNR, ERP, RP, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking to cancel a Notice to End Tenancy for end of employment, a 10 day Notice to End Tenancy for unpaid rent, for a monetary order for the cost of emergency repairs, for an order for the Landlord to make emergency repairs and other repairs, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

Although they indicated this on their Application, the Tenants had not received a one month Notice to End Tenancy due to the end of employment with the Landlord and therefore, this portion of the Application is dismissed without leave.

The monetary claims of the Tenants were unrelated to the main issue of this Application, which was the validity of the 10 day Notice to End Tenancy for unpaid rent, and therefore, the monetary claims are dismissed with leave to reapply pursuant to section 2.3 of the rules of procedure.

Issue(s) to be Decided

Should the 10 day Notice to End Tenancy for unpaid rent be cancelled?

Background and Evidence

This tenancy began on September 1, 2013, with the parties entering into a written tenancy agreement and agreeing upon a monthly rent of \$1,500.00, payable on the first day of the month. The Tenants paid a security deposit of \$750.00 on or about September 1, 2013.

The Agent for the Landlord testified that they served the Tenant with a 10 day Notice to End Tenancy on November 2, 2013, for \$1,500.00 in unpaid November rent. The Tenants had applied to cancel this Notice to End Tenancy.

The Agent for the Landlord explained that the male Tenant had contracted to do some work for a company owned by the Landlord. The Agent testified that the work was to be performed in exchange for payment to the male Tenant and was unrelated to the tenancy agreement. The Agent for the Landlord testified that there was no arrangement between the male Tenant and the Landlord for work in lieu of rent.

The Agent for the Landlord testified that for some reason the male Tenant became concerned that the Landlord was not going to pay him for the work the Tenant had contracted to do. The Agent for the Landlord testified that the Tenant began to harass the Landlord for payment of this contract work, then ceased to attend the worksite, and withheld his rent.

The Tenants testified that they withheld all the rent because they had to pay for emergency repairs in the rental unit. The Tenants explained the emergency repairs of \$240.00 were to repair a fence that their dog had escaped through, because the fence had drywall screws in it. The Tenants also testified that the rental unit was not cleaned when they moved into the rental unit and there were problems with a water tap.

The Tenants testified that they agreed that the work performed for the Landlord's company was not in exchange for rent. They testified they did not intend to harass the Landlord or the Agents.

Analysis

Based on the above, the evidence and testimony, I find that the 10 day Notice to End Tenancy for unpaid rent should not be cancelled, that the Tenants have breached the Act by failing to pay rent when due, and I dismiss their Application to cancel the 10 day Notice to End Tenancy without leave to reapply.

Under the Act and tenancy agreement the Tenants were not allowed to withhold rent, unless they had some authority under the Act to do so. Section 26(1) of the Act states:

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.

In this instance the Tenants did not perform repairs at the rental unit which would be considered emergency repairs under the Act. Emergency repairs are defined in section 33 of the Act, and includes such items as major leaks in pipes or the roof, damaged or blocked water or sewer lines, the primary heating and electrical systems. I find the Tenants did not meet the definition of emergency repairs and therefore, they had no authority under the Act to withhold any amount of rent. Furthermore, even if the Tenants' work did constitute emergency repairs (which it does not), they could not have withheld all of the rent due.

Therefore, during the hearing I dismissed the Tenants' Application.

Following my dismissal the Agent for the Landlord orally requested an order of possession. Under section 55 of the Act, I must grant that request, and I grant the Landlord an order of possession effective **two (2) days** after service upon the Tenants. This order may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 26, 2013

Residential Tenancy Branch

