



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: RP, ERP, CNL, MNDC, FF
For the landlord: OPR, MNR, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied for an order requiring the landlord to make repairs and emergency repairs to the rental unit, an order cancelling the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use of the Property, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, and for recovery of the filing fee.

The tenant and the landlord’s agent (hereafter “landlord”) attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the applications or the evidence. I note that the only documentary evidence in either file was supplied by the tenant.

Thereafter both parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other’s evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the landlord's 2 Month Notice to end the tenancy, to an order requiring the landlord to make repairs and emergency repairs, to monetary compensation, and to recover the filing fee?
2. Is the landlord entitled to an order of possession for the rental unit, a monetary order for unpaid rent, and to recover the filing fee?

Background and Evidence

Neither party provided a copy of a written tenancy agreement and there was no evidence that one had been written by the landlord for this tenancy.

The tenant supplied undisputed testimony that this tenancy began on July 15, 2013, that monthly rent is \$650, and that she paid a security deposit of \$325.

Landlord's application-

Due to Rule 11.1 of the Dispute Resolution Rules of Procedure, I heard from the landlord first as it was his obligation to explain or support the Notice to end the tenancy.

In support of the landlord's request for an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent, the landlord failed to supply a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

I then asked the respective parties about the details of the Notice, with the understanding that I would proceed with considering the Notice if the parties could agree on the contents of the Notice.

The landlord testified that the Notice was dated December 5, 2013, and the tenant said the Notice was dated December 6, 2013. The landlord failed to submit the party serving the Notice on the tenant. The landlord testified that the Notice listed a move-out date of December 19, 2013, and listed unpaid rent of \$650.

The landlord's monetary claim was \$650 for unpaid rent for an unspecified month.

In response, the tenant testified that she paid the rent in cash slipped under the landlord's door, as was her custom. The landlord resides in the upper portion of the residential property and the tenant resides in the basement level of the home.

The tenant further submitted that the landlord did not give her a receipt for her rent payment.

Tenant's application-

The tenant said that the landlord issued her a 2 Month Notice to End Tenancy for Landlord's Use of the Property; however the tenant failed to provide a copy of such Notice and the landlord provided no mention of a 2 Month Notice.

In support of her request for orders for the landlord, the tenant submitted that since October, she has had to deal with heating issues and that for the entire month of December, her heat has been turned off from the landlord's portion of the residential property. Additionally, the tenant submitted that there are loud noises coming from the walls in the residential property, leading to sleep loss and loss of quiet enjoyment.

The tenant's relevant documentary evidence included copies of text message communication between the landlord and the tenant regarding heat and noise issues.

The tenant's monetary claim is \$500, due to having insufficient heating in the rental unit.

In response, the landlord said that he engaged the services of a technician after being notified of the heating issue, and the technician informed him that the problem was caused by the tenant overloading the breakers.

Analysis

Landlord's application-

A Notice to End Tenancy can only be enforced if it complies with the requirements of section 52 of the Act. Without being able to review a copy of the Notice to End Tenancy that the landlord said was served on the tenants, I cannot conclude that the Notice is effective and therefore enforceable.

As the landlord failed to submit a copy of the Notice and as the parties could not agree on the contents of the Notice, I therefore find that the landlord submitted insufficient evidence to show the tenant was issued a valid, enforceable 10 Day Notice to End Tenancy for Unpaid Rent and I therefore dismiss their application, including a request to recover the filing fee, without leave to reapply.

Tenant's application-

As to the tenant's request for an order cancelling a 2 Month Notice said to be issued by the landlord, the tenant likewise failed to submit a copy of the Notice. For the same reasons I have dismissed the landlord's application, I dismiss that portion of the tenant's application seeking cancellation of a 2 Month Notice for her failure to supply sufficient evidence supporting her request.

As to the tenant's request for monetary compensation and for an order requiring the landlord to make repairs and emergency repairs to the rental unit, Section 32 of the *Act* requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 33 of the *Act* requires the landlord to make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property; and are made for the purpose of repairing the following: major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to the rental unit or the electrical system.

I accept the tenant's evidence that she notified the landlord of heating and noise issues since at least October 2013, through text messages, rather than a written request served to the landlord under the methods recognized in section 88 of the *Act*.

I accept that text message communication was the preferred method of communication between the parties, as demonstrated by the tenant's evidence.

Although the *Act* does not recognize text message transmission as an acceptable method of delivery of documents, I order that the delivery of the tenant's complaints regarding noise and heating issues, with the landlord's response, sufficiently served, pursuant to section 71 of the *Act*.

I find the landlord's response to the tenant's requests has been insufficient. Although the landlord submitted that a technician attended the rental unit and reported an overloaded breaker, the landlord failed to supply such evidence that this was the case.

I find this insufficient response by the landlord has caused the tenant to have suffered a loss of use and enjoyment of the rental unit, causing a diminished value of the tenancy.

Residential Tenancy Branch Policy Guideline 6 states: “in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.”

I find a reasonable amount of monetary compensation for the tenant considering the landlord’s insufficient response to be \$100 per month, for the loss of heating in the winter months and the noises coming from the walls.

I therefore award the tenant monetary compensation in the amount of \$400, comprised of a diminished value of the tenancy of \$100 per month for October, November, December, 2013, and January 2014.

The tenant is directed to deduct \$400 from her next or a future month’s rent payment in satisfaction of her monetary award.

As to the request for repairs, I order the landlord to immediately hire a professional plumber, electrician, or other service professional to address the lack of heating in the rental unit and the noises in the walls. The landlord is ordered to comply with the service professional’s advice and to make any repair recommended.

I also order the landlord to share with the tenant the reports of the service professionals immediately after obtaining the same.

I have not ordered a continuing rent abatement as the tenant has not requested the same through her application. The landlord is advised, however, that his failure to abide by the requests for repairs as noted above may result in the tenant applying for further monetary compensation such as a continuing rent reduction and for a possible amount greater than \$100 per month, as the landlord has now been put on notice of his obligations and has been ordered to make repairs.

Due to some success on her application, I grant the tenant recovery of the filing fee of \$50, which she is directed to deduct from her next or a future month’s rent payment.

Due to the above, I find the tenant is entitled to a total monetary award of \$450, comprised of diminished value of the tenancy for \$400 and the filing fee of \$50.

The tenant is directed to deduct her monetary award of \$450 from her next or a future month’s rent payment in satisfaction of her monetary award.

In the alternative, if for any reason this tenancy end prior to the tenant being able to satisfy her monetary award, I grant the tenant a monetary order in the amount of \$450, which is not enforceable if the tenant otherwise redeems her monetary award through a deduction in her monthly rent.

Conclusion

For the reasons stated above, the landlord's application is dismissed.

The tenant's application has been granted in part.

The part of the tenant's application seeking cancellation of a 2 Month Notice to End Tenancy for Landlord's Use of the Property is dismissed.

The tenant is granted a monetary award of \$450, to be redeemed through a monthly rent deduction. In the alternative, the tenant is granted a monetary order of \$450, pursuant to section 67 of the Act, which I have enclosed with the tenant's Decision. This ordered must be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

The landlord has been ordered to make repairs as noted above.

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: January 27, 2014

Residential Tenancy Branch

