



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, RP, MNDC, PSF, LRE, RR, OPR, MNR, FF, MT

Introduction

This hearing dealt with applications by both the tenants and the landlord. The tenants apply to cancel a notice to end tenancy for unpaid rent, for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, for orders that the landlord comply with the Act, Regulation, or tenancy agreement, that the landlord make emergency repairs for health or safety reasons, that the landlord make repairs to the unit, that the landlord provide services or facilities required by law, to suspend or set conditions on the landlord's right to enter the rental unit, to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover their RTB filing fee. The landlord applies for an order of possession and a monetary order for unpaid rent and to recover her RTB filing fee.

The landlord and tenant both attended the teleconference hearing and gave affirmed evidence. The landlord's realtor also attended the hearing and gave both affirmed evidence and affirmed translation of the landlord's evidence.

Issue(s) to be Decided

Are the tenants entitled to a cancelation of the notice to end tenancy?

Are the tenants entitled to a monetary order?

Are the tenants entitled to the other relief sought?

If the tenants are not entitled to a cancelation of the notice to end tenancy, is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenant's application for dispute resolution was unclear. At the beginning of the hearing, the tenant clarified that she is seeking to cancel the notice to end tenancy, a

monetary order for compensation, orders that the landlord comply with the Act, Regulation, or tenancy agreement, that the landlord make emergency repairs for health or safety reasons, that the landlord make repairs to the unit, that the landlord provide services or facilities required by law, that the landlord's right to enter the rental unit be suspended or that conditions be set, to allow the tenant to reduce rent for repairs, services of facilities agreed upon but not provided, and to recover their RTB filing fee.

The parties entered into a tenancy agreement starting November 1, 2013. It is a fixed-term tenancy agreement and the tenants are obligated to pay \$2,500.00 rent per month in advance on the first day of the month. The tenants were also obligated to pay a security deposit of \$1,250.00 by October 31, 2013.

The landlord gave evidence that the tenants paid the security deposit by cheque, but the cheque was returned NSF on November 20, 2013. She says the tenants have not paid the security deposit.

The landlord gave evidence that she served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on December 20, 2013 by posting the Notice on the tenants' door. The Notice is dated December 30, 2013, however the landlord states the Notice is dated wrong. The Notice says the tenants failed to pay rent of \$2,750.00 that was due on December 1, 2013. The landlord gave evidence that the amount of unpaid rent was in fact \$1,500.00 but the landlord also included the unpaid security deposit of \$1,250.00. The Notice specifies a move-out date of December 20, 2013.

The tenant gave evidence that she was personally served with the Notice on December 20, 2013. The tenant's evidence is that she made no further rent payments after receiving the Notice.

The tenant gave evidence that she paid \$1,000.00 for December 2013 rent on December 3, 2013. Asked why she did not pay the entire rent for the December 2013, the tenant gave evidence that she thought there was something wrong with the house that was making her family sick. The tenant gave evidence that she has concerns about the water in the house and the hot tub.

The tenant gave evidence that she and her daughter have suffered from various health problems since they moved into the house, and the tenant believes their health problems are linked to problems with water in the house and/or carbon monoxide poisoning from the house.

The parties gave evidence regarding whether or not there is a problem with the water or air in the rental unit. I have not summarized that evidence here as it is not relevant to the issue of the payment of rent, as explained in the Analysis below.

The tenant gave evidence on three issues that she says entitle her to compensation: The hot tub chemicals, the septic tank back-up, and the illness suffered by herself and her family.

The tenant gave evidence that the hot tub had not been cleaned or maintained when the tenants moved in. She said the hot tub worked but the tenants had to purchase \$200.00 of chemicals for it. She also said the landlord agreed to have the swimming pool and hot tub winterized but did not do so. She said that someone came to the house “supposedly” to winterize the pool and hot tub, but she did not think the work was done properly. The landlord gave evidence that the tenants are responsible for maintenance, including chemicals for the hot tub.

The tenant gave evidence that the septic tank backed up into the house on the evening of December 16, 2013. She said she cleaned it up, but the problem occurred twice more. Accordingly, she did not use the washing machine and used the toilet and shower minimally until the landlord had the septic tank serviced on December 24, 2013. The landlord’s agent gave evidence that he visited the rental unit on December 20, 2013 and there did not appear to be a problem with the water. The landlord arranged for the septic tank to be serviced on December 20th however snow prevented the septic tank company from doing the work until December 24, 2013.

The tenant gave evidence that she has been ill since November 2013 and that she is concerned about the water and air quality in the house. She said a doctor told her the day before the hearing that she had copper poisoning and carbon monoxide poisoning. The tenant did not provide any documentary evidence of those medical conditions.

The tenant and landlord both submitted evidence regarding the water and air quality. The landlord stated that the Fraser Health Authority (FHA) came to the rental unit and tested the water from a tap on the exterior of the house on January 3, 2014. The landlord provided a lab test result commissioned by the FHA which does not appear to indicate any problem with the water. The tenant says the problem is the water in the house, not on the exterior of the house. The landlord states the FHA representative told him that copper pipes like those in the house are in fact cleaner than plastic pipes. The tenant provided a copy of several water test reports from Coast Spa Lifestyles which appear to indicate higher than recommended levels of copper and other dissolved solids in the hot tub water.

The landlord provided a copy of a report from a furnace company service technician who tested for carbon monoxide on December 19, 2013. That report indicates there was no problem with carbon monoxide at the time of the test. The tenant states that she purchased a new carbon monoxide detector in December 2013 and it goes off almost every day, especially when she is using the gas stove.

Analysis

I find that the tenants were personally served with the Notice on December 20, 2013. Both the landlord and the tenant gave evidence that the Notice was served on December 20, 2013 however they differed in their memories of how the Notice was served. The tenant was clear in her evidence on this point, and I find her memory of receiving the Notice personally is more accurate than the landlord's memory of posting the Notice on the door.

The tenant filed to dispute the Notice on December 30, 2013. Pursuant to Section 46 of the Act, a tenant must file for dispute resolution within five days of receiving a notice to end tenancy for unpaid rent. However, the incorrect date of "December 30, 2013" on the Notice would have led the RTB Officer who received the tenants' application to believe that the tenants were not beyond the filing deadline. The RTB Officer would therefore not have advised the tenants that they needed to apply to extend the time to make application. Similarly, I did not realize until after the hearing that the tenants filed their application for dispute resolution more than five days after receiving the Notice. For these reasons, I find that exceptional circumstances exist within the meaning of Section 66 to extend the tenants' deadline to file for dispute resolution and I find that the tenants did not file for dispute resolution beyond the filing deadline to do so.

The rules about payment and non-payment of rent are set out in Section 26 of the Act. Section 26 provides that a tenant must pay rent when it is due unless the tenant has a right under the Act to deduct all or a portion of the rent. The Act provides very limited circumstances in which a tenant is entitled to deduct rent. A tenant may not deduct rent for perceived problems with a rental unit. A tenant's remedy in that situation is to apply for dispute resolution.

I find that the tenant has not given evidence of any circumstance which entitles to her deduct rent pursuant to the Act. For that reason, I dismiss the tenants' application to cancel the Notice.

I have upheld the Notice and the landlord is therefore entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

The Notice specified a move-out date of December 20, 2013. However, pursuant to Section 46(1), the effective date must be at least 10 days after the tenant receives the Notice. The effective date is therefore deemed to be December 30, 2013.

I find that the tenants have been overholding tenants within the meaning of Section 57 since December 31, 2013. The landlord is entitled to compensation for the tenants' use and occupancy of the rental unit since that time.

I find that the tenants failed to pay \$1,500.00 rent that was due in the month of December 2013. I find that the landlord is entitled to compensation for the month of January 2014 which I set at \$2,500.00. I find that the landlord is entitled to compensation for half of the month of February 2014 and I set that compensation at \$1,250.00. The total amount due the landlord is \$5,250.00.

Since the tenancy is at an end, it is not necessary that I deal with the following parts of the tenants' application:

- that the landlord comply with the Act, Regulation, or tenancy agreement;
- that the landlord make emergency repairs for health and safety reasons;
- that the landlord make repairs to the unit;
- that the landlord provide services or facilities required by law;
- that the landlord's right to enter the rental unit be suspended or that conditions be set;
- that the tenants be allowed to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant has also applied for a monetary order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement. I find the tenant has not proven that the landlord agreed to pay for the hot tub chemicals. There is no reference to such an agreement in the tenancy agreement and I find that hot tub chemicals are similar to other cleaning products which a tenant is normally responsible to provide.

I find that the tenant has proven she suffered a loss for a period of eight days after the septic tank backed up on December 16, 2013. Although it is not clear whether the

problem still existed by December 20 when the landlord's agent came to the rental unit, the tenant made a reasonable decision in using water very minimally until the septic tank was serviced on December 24, 2013. The tenants are entitled to compensation for the loss of use of water for eight days, and I set that amount at \$80.00 per day for a total of \$640.00.

I find the tenant has not proven she suffered a compensable loss due to illness arising from the water or air quality of the rental unit. The tenant did not provide evidence from a medical practitioner that she suffers from any type of water or air poisoning. Further, I find the evidence does not support on a balance of probabilities that any water or air problems exist in the rental unit. Finally, there is no evidence of a link between the tenant's purported health problems and the purported water and/or air problems in the rental unit.

The parties have each had some success in their applications and I make no order for either party to recover their RTB filing fee from the other party.

The tenants' compensation of \$640.00 is deducted from the \$5,250.00 due from the tenants to the landlord. Accordingly, I grant the landlord a monetary order for \$4,610.00 pursuant to Section 67. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The tenants' application to cancel the Notice is dismissed. I grant the landlord an order of possession and a monetary order of \$4,610.00. The tenants' application for orders that the landlord comply with the Act, Regulation, or tenancy agreement, that the landlord make emergency repairs for health or safety reasons, that the landlord make repairs to the unit, that the landlord provide services or facilities required by law, to suspend or set conditions on the landlord's right to enter the rental unit, to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover their RTB filing fee are dismissed.

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: February 17, 2014

Residential Tenancy Branch

