Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OPR, MNR, MNSD, FF

Introduction:

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Ten Day Notice for Unpaid Rent. With the consent of both parties, the Tenant's Application for Dispute Resolution was amended to show the correct spelling of the Landlord's name, as provided at the hearing.

The Tenant submitted several documents to the Residential Tenancy Branch as evidence for these proceedings. She stated that she attempted to serve copies of the documents to the Landlord on various dates prior to filing her Application for Dispute Resolution on January 13, 2104. She stated that the Landlord refused to accept the documents when they were initially presented to him and that she did not attempt to re-serve those documents to him as evidence for these proceedings.

As the Tenant did not serve the Landlord with any of the aforementioned documents as evidence for these proceedings, as is required by section 3 of the Residential Tenancy Branch Rules of Procedure, none of those documents were accepted as evidence for these proceedings. In my view, the Tenant had an obligation to serve those documents to the Landlord after filing the Application for Dispute Resolution if she wished to rely upon them as evidence. The Tenant does not have the right to rely upon them as evidence simply because she attempted to give them to the Landlord at a prior date, when there could be no reasonable expectation that they were provided as evidence for these proceedings.

Preliminary Matter

The Agent for the Landlord with the initials "N.H." stated that an envelope containing the Application for Dispute Resolution and the Notice of Hearing, which was addressed to

both Respondents, was sent to the rental unit on January 21, 2013. The female Respondent stated that the male Respondent received this package; that he briefly showed it to her; that he did not provide her with a copy of the documents; and that she did not understand that the Landlord was seeking $1,800.00 in compensation for unpaid rent until I provided her with that information at the outset of this hearing.

On the basis of the information provided at the outset of the hearing, specifically the female Respondent's testimony that the male Respondent did receive the aforementioned package, I initially determined that the male Respondent had been served with the Landlord's Application for Dispute Resolution and the Notice of Hearing, in accordance with section 89(1)(c) of the *Residential Tenancy Act (Act)* and that the female Respondent had been served with the Landlord's Application for Dispute Resolution and the Notice of Hearing, in accordance with section 89(2)(c) of the *Act*.

At the outset of the hearing the Landlord was advised that the female Respondent had not been served with the Landlord's Application for Dispute Resolution in accordance with section 89(1) of the *Act.* This conclusion was based on the undisputed evidence that only one package was mailed to the rental unit and on the female Respondent's testimony that the male Respondent did not provide her with a copy of those documents.

At the outset of the hearing the Landlord was given the option of either withdrawing the application for a monetary Order or proceeding with the claim for a monetary Order, with the understanding that the monetary Order would only name the male Respondent. The Agent for the Landlord with the initials "R.A." opted to apply for a monetary Order that only names the male Respondent.

During the hearing the Agent for the Landlord with the initials "R.A." and the female Respondent agreed that the female Respondent moved into one bedroom of this residential complex on December 01, 2013; that the male Respondent moved into a second bedroom of the residential complex sometime later in December of 2013; that other bedrooms in the residential complex are rented out under different tenancies; and that all of these parties share common living areas.

Although the Agent for the Landlord with the initials "R.A." initially stated that the rent for the rental unit was $1,000.00 per month, she later acknowledged that the Landlord had a verbal tenancy agreement with the male Respondent, who agreed to pay $500.00 in monthly rent for his bedroom and use of the common areas, and that the Landlord had a verbal tenancy agreement with the female Respondent, who also agreed to pay $500.00 in monthly rent for her bedroom and use of the common areas.

The Tenant stated that she had a verbal tenancy agreement with the Landlord in which she agreed to pay $500.00 per month for her bedroom and that the male Respondent was living in a different bedroom under a separate tenancy agreement.

On the basis of the undisputed evidence, I find that the Tenant entered into a verbal tenancy agreement with the male Respondent and into a separate verbal tenancy agreement with the female Respondent. Upon determining that the male and female Respondents live in separate bedrooms under separate tenancy agreements, I concluded that the female Respondent has not been served with the Application for Dispute Resolution in accordance with section 89 of the *Act.*

While I accept that the parties live in the same residential complex, I do not accept that the Respondents reside together, given that they do not have the right to occupy the other party's private living space. The Landlord cannot, therefore, serve the female Respondent with an Application for Dispute Resolution by leaving it with the male Respondent. As the Landlord has not served the female Respondent with the Landlord's Application for Dispute Resolution in accordance with section 89 of the *Act*, I dismiss the Application for Dispute Resolution as it pertains to the female Respondent, with leave to reapply.

As the two Respondents entered into individual tenancy agreements, I find that the Landlord should have filed two separate Applications for Dispute Resolution, one of which names the male Respondent and one of which names the female Respondent.

In these circumstances I find it appropriate to also dismiss the Application for Dispute Resolution as it pertains to the male Respondent, with leave to reapply. Although I accept that the Application for Dispute Resolution was served to him in accordance with section 89 of the *Act*, I find that the details of the dispute have been co-mingled with a second tenancy and are not, therefore, clear. Given the confusing and unclear information in the Application for Dispute Resolution, I find that it would be prejudicial to proceed with this matter in the absence of the male Respondent.

Issue(s) to be Decided:

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence:

The Landlord and the Tenant agree that the female Respondent moved into the residential complex on December 01, 2013; that the female Respondent agreed to pay monthly rent of $500.00 by the first day of each month; and that the Tenant paid a security deposit of $250.00.The Landlord and the Tenant agree that the Tenant paid rent for December of 2013 but has not paid rent for January or February of 2014.

The Agent for the Landlord with the initials "N.H." stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of January 13, 2014, was posted on the front door of the residential complex on January 03, 2014. The female Respondent stated that the male Respondent provided her with a copy of this Notice to End Tenancy sometime in January, although she does not recall the specific date.

At the conclusion of the hearing the Agent for the Landlord with the initials “R.A.” requested an Order of Possession.

The Tenant stated that she withheld rent for January, in part, because she paid $221.75 to repair a toilet in the residential complex. She stated that none of the toilets in the residential complex worked when she moved in; that she reported the problem to the Landlord by telephone on more than two occasions on, or about, December 02, 2013; that the Landlord did not repair the toilet; that she paid to have the toilet repaired; and that she attempted to provide the receipt for the repair to the Landlord, but he refused to accept it.

The Tenant stated that the toilet was repaired by a handyman who provided her with a generic receipt that does not have a company name. The Tenant stated that she did not attempt to provide the Landlord with a written account of the emergency repairs.

The Agent for the Landlord with the initials “R.A.” stated that the Tenant never reported a problem with the toilet in the residential complex; that she believes all of the toilets were working properly; and that the Tenant did not attempt to provide the Landlord with a receipt for this repair.

The Tenant stated that she withheld rent for January, in part, because she paid $100.00 to repair leaking plumbing. She stated that some pipes in the basement were leaking; that she reported the problem to the Landlord by telephone on more than two occasions during the first week of December of 2013; that the Landlord did not repair the pipes; that she paid to have the pipes repaired; and that she attempted to provide the receipt for the repair to the Landlord, but he refused to accept it.

The Tenant stated that the plumbing was repaired by a handyman, who provided her with a generic receipt that does not have a company name. The Tenant stated that she did not attempt to provide the Landlord with a written account of the emergency repairs.

The Agent for the Landlord with the initials “R.A.” stated that the Tenant never reported a problem with leaking pipes although she did provide the Landlord with a receipt for this repair.

The Tenant stated that she withheld rent for January, in part, because she paid $196.00 to install a deadbolt on the front door of the residential complex. She stated that the locking mechanism on this door did not work; that she reported the problem to the Landlord by telephone on more than two occasions during the first few days of December of 2013; that the Landlord did not repair the door; that she paid to have a deadbolt lock installed; and that she attempted to provide the receipt for the repair to the Landlord, but he refused to accept it.

The Tenant stated that the lock was installed by a handyman, who provided her with a generic receipt that does not have a company name. The Tenant stated that she did not attempt to provide the Landlord with a written account of the emergency repairs.

The Agent for the Landlord with the initials "R.A." stated that the Tenant never reported a problem with the door; that the lock on this door was functioning properly; and that the Tenant did not attempt to provide the Landlord with a receipt for this repair.

The Tenant stated that she withheld rent for January, in part, because she paid $80.00 for rat traps and poison. She stated that she was experiencing problems with rats; that she reported the problem to the Landlord by telephone on more than two occasions during the first week of December of 2013; that the Landlord did not deal with the problem; that she paid to purchase poison and traps; and that she attempted to provide the receipt for the items to the Landlord, but he refused to accept it.

The Tenant stated that the plumbing was repaired by a handyman, who provided her with a generic receipt that does not have a company name. The Tenant stated that she did not attempt to provide the Landlord with a written account of the emergency repairs.

The Agent for the Landlord with the initials "R.A." stated that the Tenant never reported a problem with rats although she did provide the Landlord with a receipt for this purchase.

The Tenant stated that she withheld rent for January, in part, because she paid $75.00 to remove and replace the caulking around the bathtub. As this does not meet the definition of an "emergency repair", as defined by the Act, the Tenant was not permitted to discuss this repair at the hearing.

Analysis

Section 88(g) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by posting it in a conspicuous place at the address where the tenant resides. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy that is the subject of this dispute was posted on the door of the residential complex where the female Respondent resides.

I find that posting a document on the front door or a residential complex where several people live under individual tenancies does not constitute service of the document in accordance with section 88(g) of the *Act.* I find it entirely possible that the document could be located by a third party, who could elect not to deliver the document to the appropriate party. I therefore do not consider this location to be a conspicuous place where it was likely to be found by the Tenant.

On the basis of the testimony of the female Respondent, I find that the male Respondent provided the female Respondent with a copy of that Notice to End Tenancy that is the subject of this dispute. I therefore find that this document was sufficiently served to the female Respondent in accordance with section 71(2)(b) of the *Act.*

The Notice to End Tenancy that was received by the Tenant is signed by the Landlord and is dated January 03, 2014. The Notice to End Tenancy names both Respondents, it declares that the Tenants must vacate the unit by January 13, 2014; and it declares that the Tenants have failed to pay rent of $1,000.00 that was due on January 01, 2014.

The Notice to End Tenancy names both Respondents and I find that either Respondent had the right to dispute the Notice. Although the information on the Notice to End Tenancy may be inaccurate, as the amount of overdue rent includes rent due under another tenancy, I find that this information does not render the Notice ineffective.

As the female Respondent is not certain of when the Notice to End Tenancy was located by the male Respondent and she does not recall when the male Respondent provided it to her, I am unable to determine when the Notice was received by the Respondents. I am therefore unable to determine whether the Tenant filed an Application for Dispute Resolution seeking to set aside this Notice within the legislated time period.

Section 46 of the *Act* authorizes a landlord to end a tenancy if rent is not paid when it is due, by giving notice to end the tenancy. As there is no dispute that the Tenant did not pay rent for January of 2014 and the Tenant received a Ten Day Notice to End Tenancy for Unpaid Rent, I find that the Landlord has the right to end the tenancy, pursuant to section 46 of the *Act.* I therefore dismiss the Tenant's application to set aside that Notice to End Tenancy.

In reaching this determination, I considered section 33 of the *Act* and determined that the Tenant did not have the right to withhold rent in accordance with that section.

Section 33(7) of the *Act* authorizes a tenant to withhold rent if the landlord does not reimburse the tenant for emergency repairs after the tenant has provided the landlord with a written account of the emergency repairs and a receipt for each amount claimed. In my view, this requires the Tenant to provide the Landlord with an explanation, in writing, of why the repairs were needed and what repairs were made.

Although the Tenant alleges that she attempted to provide the Landlord with receipts for these repairs, she acknowledged that she did not provide the Landlord with any written explanation of the need for the repairs or the details of the repairs. As the receipts that the Tenant allegedly attempted to provide to the Landlord were not accepted as evidence, I cannot conclude that the information on the receipts could be accepted as a written account of the repairs.

Section 33(5) of the *Act* requires a landlord to reimburse a tenant for the cost of emergency repairs, upon receipt of the written account of the emergency repairs and a receipt for each amount claimed. Even if I were to accept that the Tenant attempted to provide the Landlord with receipts and a written account of the emergency repairs, I find that the Tenant has failed to establish there was a need for emergency repairs.

There is a general legal principle that places the burden of proving a fact on the person who is alleging and attempting to rely upon the fact. When a tenant is electing to withhold rent as a result of emergency repairs, the burden of proving there was a need for emergency repairs rests with the tenant. Section 33(1) of the *Act* defines an emergency repair as repairs that 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 major leaks in the plumbing or roof, damaged or blocked water pipes, sewer pipes, or plumbing fixtures, the primary heating system, damaged or defective locks, and the electrical system.

Although I accept that many of the repairs that were allegedly made to the rental unit could constitute emergency repairs, as defined by the legislation, I find that the Tenant has submitted insufficient evidence to establish that the repairs were needed. In reaching this conclusion, I was influenced by the fact that the Tenant submitted no evidence to corroborate her testimony that the front door did not lock, that there were leaking pipes, that none of the toilets in the residential complex worked, or that there were rats in the residential complex. In my view, the Tenant could have produced photographs of the alleged damages or documentary evidence from other occupants of the residential complex in support of these allegations.

In determining that the Tenant has failed to establish that the repairs were needed, I was also influenced by the fact that the Landlord contends that none of the aforementioned repairs were necessary and that the Tenant did not inform the Landlord of the need for any of the repairs.

Conclusion

As I have dismissed the Tenant's application to set aside a Notice to End Tenancy, I grant the Landlord an Order of Possession, as requested at the hearing, pursuant to section 55(1) of the *Act.* This Order of Possession is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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 13, 2014

Residential Tenancy Branch