



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MND, FF
MT, CNC

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for damage to the unit, site or property / and recovery of the filing fee; ii) by the tenant for more time to make an application to cancel a notice to end tenancy / and cancellation of a notice to end tenancy for cause. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the tenancy began on December 01, 2012. Market value of monthly rent is \$1,200.00, and the portion of this rent for which the tenant is responsible is \$595.00. A security deposit of \$600.00 was collected. When tenancy began, the tenant resided in unit # 103. Effective April 01, 2013, the tenant transferred to unit # 222.

Pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated January 16, 2014. The notice was served by way of posting on the unit door on that same date. A copy of the notice was submitted in evidence. The reason identified on the notice in support of its issuance is as follows:

Tenant has caused extraordinary damage to the unit/site or property/park

Subsequently, the tenant filed an application to dispute the notice on February 06, 2014.

As the notice was served by way of posting on the unit door on January 16, 2014, pursuant to section 90 of the Act which speaks to **When documents are considered to have been received**, the notice is deemed to have been received 3 days later on January 19, 2014.

Section 47(4) of the Act provides that a tenant may dispute a 1 month notice “within 10 days after the date the tenant receives the notice.” In the circumstances of this dispute the 10th day is January 29, 2014. As the tenant’s application was filed on February 06, 2014, it was filed outside the 10 day period available. As to the reason(s) why her application was filed late, the tenant testified that she was simply unable to acquire the assistance of a social worker in a more timely manner.

Compensation sought by the landlord in the total amount of \$1,640.47 arises out of 2 separate calls to a plumber for service to the malfunctioning toilet in the unit, as follows:

November 23, 2013: \$905.10 (invoice total for labour & materials)

Notations on plumber’s invoice:

Plugged toilet. 1) Found w/c plugged. 2) Snaked & could not fit snake down toilet. 3) Drained toilet & tipped upside down...found a quarter, a screw, a ring, a McDonald’s toy & a necklace charm balled up w/bowel movement. 4) Retrieved and re-set toilet. 5) Did not have good flush due to flapper. 6) Replaced flapper. 7) All is good at this time.

November 24, 2013: \$725.02 (invoice total for labour & materials)

Notations on plumber’s invoice:

Toilet still plugging up. 1) Removed fatigued toilet. 2) Replaced with a gerber “viper” toilet high EPF toilet and toilet seat.

The landlord’s agent testified that the unit was built in 1989. The landlord’s agent testified that she was unable to confirm whether or not the toilet replaced was the same toilet which was originally installed in 1989.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 66 of the Act addresses **Director’s orders: changing time limits**, and provides in part as follows:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) *[starting proceedings]* or 81(4) *[decision on application for review]*.

As well, Residential Tenancy Policy Guideline # 36 speaks to “Extending a Time Period.”

Based on the documentary evidence and testimony, and in consideration of the above statutory and guideline provisions, I find that the circumstances identified by the tenant which resulted in the late filing of her application are not “exceptional.” Accordingly, the tenant’s application for more time to make an application to cancel a notice to end tenancy is hereby dismissed, as is the tenant’s application for cancellation of a notice to end tenancy.

Following from the foregoing, I find that the landlord has established entitlement to an **order of possession**. In order to provide the tenant with more time to make arrangements to relocate, the landlord’s agent requested that the order of possession be made effective **April 30, 2014**.

In relation to compensation sought by the landlord arising from 2 virtually back-to-back home visits by a plumber, Residential Tenancy Policy Guideline # 40 speaks to the “Useful Life of Building Elements,” and provides that the useful life of a toilet is 20 years.

Based on the documentary evidence and testimony, I find on a balance of probabilities that the toilet which was replaced was the original toilet installed in 1989. Accordingly, I find that the subject toilet had outlived its useful life of 20 years. I note that the day right after the toilet was unplugged (and the flapper replaced), the entire toilet was replaced. In the result, I find that the landlord has established entitlement to nominal damages in the limited amount of **\$100.00**.

As the landlord has achieved a measure of success with this application, I find that the landlord has also established entitlement to recovery of the **\$50.00** filing fee.

I hereby order that the landlord may withhold \$150.00 (\$100.00 + \$50.00) from the tenant’s security deposit at the end of tenancy.

As the end of tenancy nears, the attention of the parties is drawn to the following sections of the Act:

Section 37: Leaving the rental unit at the end of a tenancy

Section 38: **Return of security deposit and pet damage deposit.**

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **Wednesday, April 30, 2014**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby order that the landlord may withhold **\$150.00** from the tenant's security deposit of \$600.00.

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: March 26, 2014

Residential Tenancy Branch

