



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNR, MNDC, OLC, RP, LRE, RR, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy; to a monetary order; to orders to have the landlord complete repairs; set conditions on the landlord's right to enter the rental unit; for reduced rent.

The hearing was conducted via teleconference and was attended by both tenants and the landlord.

Residential Tenancy Branch Rule of Procedure 11.8 allows parties to submit digital evidence that includes photographs, audio recordings, video recordings or other material provided in an electronic form that cannot be readily reproduced on paper. The Rule goes on to state that the digital evidence must be accompanied by a written description and meet the service Rules and deadlines.

Both parties have submitted digital evidence however neither party provided a written description of the contents and neither party submitted the evidence in accordance with the deadlines required for the service of evidence.

Residential Tenancy Branch Rule of Procedure 2.3 states that an Arbitrator may dismiss unrelated disputes that are contained in a single application. The tenants have applied to cancel a notice to end tenancy and a number of other orders including a monetary order; an order to restrict landlord's access; to complete repairs; and reduced rent. However, I find that the additional orders sought by the tenants are unrelated to the issue of the notice to end tenancy.

As such, I dismiss the portion of the tenants' Application seeking a monetary order; orders for repairs; to suspend the landlord's right to access the rental unit and for a rent reduction, with leave to reapply at a future date.

However, during the hearing the parties agreed that plumbing repairs in the bathroom had not been completed. The landlord is concerned that this is resulting in the potential for additional and extraordinary damage to the bathroom and the tenants indicate that they cannot shower in the only bathroom.

As such, during the hearing I verbally ordered the landlord to make appropriate repairs as soon as possible and that the tenants were not to interfere with the landlord's access to the residential property for the purposes of these repairs. I further clarified that this meant the landlord was allowed complete access to the property whether or not the tenants were available to be there when the landlord or trades people were there for these repairs.

During the hearing, the landlord verbally request an order of possession should the tenants be unsuccessful in their Application.

Also at the outset of the hearing the parties confirmed that the landlord had served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord submits she served the tenant with 2 Notices and the tenants testified she had only served them with one Notice.

The parties confirmed that the tenants have not paid any of the rent amounts identified in the Notices. The tenants confirmed that they had not disputed the 10 Day Notice that they had received. As such, I informed the parties that, pursuant to the Section 46 of the *Residential Tenancy Act (Act)*, this meant that the tenants are conclusively presumed to have accepted the end of the tenancy and they must vacate the rental unit.

I advised both parties, however, that this issue was not before me and that if either party wanted to pursue the matters related to the 10 Day Notices they would have to file new and separate Applications for Dispute Resolution.

Issue(s) to be Decided

The issue to be decided is the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

If the tenants are unsuccessful in their Application seeking to cancel the 1 Month Notice to End Tenancy for Cause it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

Background and Evidence

The tenants submitted into evidence a copy of a tenancy agreement signed by the parties on March 13, 2014 for a 1 year and 14 day fixed term tenancy beginning on March 19, 2014 for a monthly rent of \$1,375.00 due on the 1st of each month with a security deposit of \$687.50 paid.

The landlord has submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause dated April 11, 2014 with an effective vacancy date of May 15, 2014 citing the tenants have caused extraordinary damage to the unit or property and the tenants have

breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord submits that while the tenancy began in mid March 2014 when she attended the property on March 31, 2015 she saw that the tenants had left the door open on the woodstove with a fire burning and the tenants had left some damp towels on the floor of the bathroom. The landlord amended the tenancy agreement to include terms prohibiting the tenants from having a fire with the door of the woodstove open and to not have damp towels on the bathroom floor. The parties signed the amended agreement.

The parties agree that on April 7, 2014 the tenants informed the landlord that the flooring was starting to buckle. The landlord submits that the tenants made no mention of any excessive water issues between March 31, 2014 and April 7, 2014.

The landlord wrote a letter to the tenants April 8, 2014 advising them that they had 30 days to make repairs to prevent the damage from occurring as she believed that it was caused by the tenant's actions of leaving wet towels on the floor.

Later on the same date she wrote another letter to the tenants advising them that she was going to be bringing in a restoration company to assess damage and costs. She states in the letter that they tenants may bring in their own professionals if they want for their own assessment.

The landlord provided another letter to the tenants that date, although the tenant states he did not receive it until April 9, 2014. In this third letter the landlord advised the tenants that she would have one contractor there at 9:00 a.m. on the 11th and the other would attend at 10:00 a.m. the same day.

The parties agree that on April 11, 2014 the tenants refused access to the restoration company contractor. The tenant submits that he did so because he had hired an inspector to be there at the same time and because the landlord had been "wrongfully prosecuting" him he had the right to defend himself.

The landlord submits that to the date of the hearing she is still not sure as to the exact cause of the problem because the tenant refuses access to the property and refuses to provide the landlord with video of the inspection completed by the tenants' inspector.

The tenant submits that because the landlord was "wrongfully prosecuting" them he had every right to find out for themselves what the problems were and that he only refused access to the property to the restoration people because the landlord was trying to convince the first contractor that the only problem was the wet towels and mops.

The tenant states that they have not denied the landlord access since then for the purposes of repairing the water issues and/or flooring and that the landlord has been to the property several times but nothing has been repaired.

The landlord has submitted several text messages showing that after the Notice was issued the landlord had informed the tenants that contractors were starting to refuse to attend the property because of the interference of the tenants. Specifically the tenant states that he will not just let anyone into the unit and that he will not leave the house.

In addition the landlord has submitted an invoice from a contractor who went in and started assessment work but was told to leave the property by the tenants and the job was not completed as a result.

Analysis

Section 33 of the *Act* allows a tenant to have emergency repairs completed if the emergency repairs are needed; the tenant has made at least 2 attempts to phone the landlord or their agent and following those attempts the tenant has given the landlord reasonable time to make the repairs.

The section includes defining emergency repairs as: 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 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 a rental unit; or the electrical systems. In addition Section 33(4) allows that the landlord may take over the completion of repairs at any time.

I find that the landlord was attempting to investigate and take over the responsibility for the emergency repairs that both parties agree are required. Based on the documentary evidence of the landlord I find that the tenants have interfered with the landlord's ability to do so both before and after the 1 Month Notice was issued to the tenants.

I find that the refusal by the tenants to allow the landlord's contractor assess the bathroom on April 11, 2014 has prolonged the landlord's ability to deal with the emergency repair which has now resulted in the potential for further damage to the property. I also find, based on the documentary evidence submitted by the landlord that the tenants' actions after the 1 Month Notice was issued have further delayed any ability on the part of the landlord to make the repairs.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property or the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The section goes on to stipulate that the notice to end the tenancy must end the tenancy effective on a date that is not earlier than one month after the date the tenant receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

As I have found that the tenants' actions have prohibited the landlord from taking appropriate action and that the tenants took no action to actually repair the water problem while denying the landlord access to do so provides the landlord with sufficient cause to end the tenancy.

Section 53 of the *Act* states if a landlord or tenant gives notice to end a tenancy with an effective date that does not comply with the requirements set out in the relevant section the party is seeking to end the tenancy under the effective date is deemed to be changed to the earliest date permitted under the applicable Section.

As rent is payable on the 1st of each month I find the effective date of the 1 Month Notice to End Tenancy for Cause issued on April 11, 2014 is amended to be May 31, 2014. As such, I dismiss the tenants' Application in its entirety.

Section 55(1) of the *Act* states if a tenant makes an Application for Dispute Resolution to dispute a landlord's notice to end tenancy, the director must grant an order of possession to the landlord if, the landlord makes an oral request for an order of possession and the director dismisses the tenant's Application or upholds the landlord's notice.

Conclusion

As the landlord verbally requested an order of possession during the hearing and I have dismissed the tenants' Application I grant the landlord an order of possession effective **May 31, 2014 after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: May 29, 2014

Residential Tenancy Branch

