



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, OLC, RPP, LRE AS, OPR, OPB, MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The landlord's representative and the named tenant called in and participated in the hearing. The tenant had a person said to be an occupant of the rental unit with her during the hearing.

Issue(s) to be Decided

Should a Notice to End Tenancy for unpaid rent be cancelled?

Is the tenant entitled to other relief, including emergency repairs, an order that the landlord comply with the Act, permission to assign the tenancy, return of personal property?

Is the landlord entitled to an order for possession?

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a residential apartment located in a commercial building in Langley. The tenancy began on December 10, 2013 for fixed term ending May 30, 2014. Monthly rent in the amount of \$1,250.00 is payable on the first of each month. The tenants paid a security deposit of \$625.00 at the start of the tenancy. According to the landlord, handwritten alterations to the agreement purporting to extend the tenancy to December 30, 2014 were added by the tenants and not approved or signed by the landlord.

The landlord served the tenants with a 10 day Notice to End Tenancy for unpaid rent on April 15, 2014 by posting it the Notice to the door of the rental unit. The Notice claimed that the tenant failed to pay rent in the amount of \$1,500.00 that was due on April 1st. The landlord mentioned that there was an amount owed from January and a partial

payment in April, after the Notice was given. He said that the full rent has not been paid in May or June. Partial payments have been received from the Provincial Government as shelter allowance payments. The landlord testified that the original tenants have all moved out of the rental unit and the current occupants are all strangers who the landlord does not know. The tenant in attendance at the hearing said that she continues to reside in the rental unit but the other original tenants have moved out. The landlord submitted photographs of the rental unit and of the rental property. The pictures show that the rental unit is filled with an excess of goods, clothing, boxes and belongings. Bicycles and motor scooters occupy portions of the common area hallway and stairs outside of the rental unit. The landlord said that there is extensive damage to the rental unit. He said that when he was at the rental property a stranger approached him and tried to get him to sign a shelter information or intent to rent form. He refused to sign the form. The landlord said that a prospective tenant had to apply through the landlord's agent and be approved before he would accept him as a tenant. The landlord is not prepared to accept as tenants any of the strangers now occupying the rental unit.

The tenant acknowledged that there is unpaid rent but she complained that because her co-tenants have moved out, she is not able to pay all the rent herself. She blamed the landlord because he refused to sign an intent to rent form and prevented the new occupants from paying their share of the rent. The tenant commented on the landlord's pictures; she said that the amount of clutter and belongings in the rental unit was due to the fact that she was packing up in preparation for moving. She said that she intends to move, but has not found a new place to live.

The tenant complained that the landlord's bailiff took two bicycles from the rental property and the landlord has not told her where they are. The tenant said that the landlord turned off the water and the electricity to the rental unit. The tenant said that she now has water, but the electricity is turned off.

The landlord said that the electricity for the rental unit is separately metered. The account should be in the tenant's name and the bill is payable by the tenants. He said that the Hydro account was in the name of one of the former tenants, who cancelled the account when he moved out of the rental unit. He said it was up to the tenant to arrange for a Hydro account. The tenant denied this; she said that she spoke to a Hydro official who told her that the landlord needed to turn the power back on, but she did not provide any documentary evidence with respect to the Hydro account. The landlord said that the bicycles that were removed were left on the commercial property and were not removed from the rental property. He said that other items had to be removed from the commercial space, including a stolen car that was towed away by the police.

In its application the landlord claimed an order for possession for unpaid rent and a monetary order in the amount of \$8,000.00. The landlord claimed that there was \$1,750.00 owed for rent to the end of April plus a further \$1,250.00 for May. The landlord said that it will cost more than \$5,000.00 to restore the rental property to liveable condition, for a total claim of \$8,000.00. The landlord did not submit a ledger or accounting records to show the rent payments received and the amount currently outstanding.

Analysis

The tenant acknowledged at the hearing that there the rent has not been paid in full and that there is rent outstanding. She blamed the landlord for his refusal to sign documents that would allow shelter payments to be sent to the landlord by the Provincial Government. The landlord is under no obligation to sign such documents or to accept strangers as replacement tenants when the original tenants have moved out. Based on the evidence provided, I am able to say that the tenants have failed to pay all the rent due within five days of the receipt of the 10 Day Notice to End Tenancy that was posted on April 15, 2014, however, I am unable to determine the precise amount of rent that is currently owed, because there have been partial payments since the Notice was given and the landlord has not provided a ledger or an accounting statement. The landlord has also claimed an amount for repairs, but his claim is based upon his own estimate and the claim itself is premature because the tenancy has not yet ended and the extent of the necessary repairs required after the landlord has vacant possession is yet to be determined.

I find that the tenant has not shown that there are proper grounds to cancel the 10 day Notice to End Tenancy for unpaid rent and the tenants' application to cancel the Notice to End Tenancy is therefore dismissed without leave to reapply.

Section 55 of the *Residential Tenancy Act* provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
 - (b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenants' application to dispute the landlord's Notice to End Tenancy. The landlord applied for an order for possession and made an oral request for an order of possession at the hearing. Pursuant to section 55 I grant the landlord an order for possession effective two days after service upon the tenants. This order may be registered in the Supreme Court and enforced as an order of that court.

Because the tenancy has ended there is no basis for the tenants' claims for other relief, including a repair order, and order restricting the landlord's access to the rental unit and granting the tenant permission to assign or sublet. The tenant claimed that she is owed a sum for emergency repairs, but she did not submit evidence to support such a claim and it is also dismissed without leave to reapply.

With respect to the tenant's claim for the return of her property, namely: two bicycles, I find that they were removed from an area outside the rental property that is part of the commercial property, but they should be returned to the tenant and I direct the landlord to have his bailiff return the bicycles to the tenant as soon as possible.

With respect to the landlord's claim for a monetary order, I have noted that the landlord's claim for the cost to repair damage to the rental unit is premature. With respect to the claim for unpaid rent, the landlord has not provided evidence to show the current amount owed for rent. I have therefore determined that the landlord's claim for a monetary order, both for rent and for damages should be dismissed with leave to reapply.

Conclusion

The landlord has been granted an order for possession. The tenants' claims have been dismissed, save for a direction that the landlord arrange for her bicycles to be returned. The landlord's application for a monetary order is dismissed with leave to reapply.

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: June 13, 2014

Residential Tenancy Branch

