



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, OPR, MNR, FF

Introduction

In the first application the tenants seek to cancel a ten day Notice to End Tenancy and to recover \$5400.00 for renovation work performed by Mr. A.C. They say they were entitled to reduce this amount from rent and did so.

In the second application the landlord seeks an order of possession pursuant to the Notice and a monetary award for unpaid rent.

The parties agreed that this tenancy will end August 31st, 2014 and the landlord will have an order of possession for then.

Issue(s) to be Decided

Was there an agreement to offset rent against renovation costs? What rent, if any, is owed? Can I consider the tenants' claim for renovation work?

Background and Evidence

The rental unit is the upper portion of a building. The landlord lives in a studio suite below. The tenancy started in April 2011. The monthly rent is \$1575.00. The landlord holds a \$787.50 security deposit and a \$787.50 pet damage deposit. There is a written tenancy agreement.

The evidence shows that the tenants have held back a total of \$5400.00 of rent since March 2014. They have paid the August rent amount.

They accounted to the landlord for the \$5400.00 in a text message sent in early May 2014 and held back portions of rent in June and July after that, all without apparent dissent or comment from landlord.

The evidence is clear that the tenants or at least Mr. A.C. has made a significant renovation improvement to the bathroom, including a new tub, new toilet and new tile in the surround. It is clear the landlord new and approved of a renovation taking place.

The tenants allege an oral agreement with the landlord to offset the cost of material and labour for the work. They say they quoted the landlord \$5500.00 for the job but came in at \$5400.00.

The landlord denies he approved the extent of the work done or that he agreed the tenants could set off their charges against rent.

Analysis

On the evidence presented, I find that the tenants have withheld \$5400.00 from rent in payment of the renovation work.

I find that the tenants did not have an enforceable agreement to withhold any money owed to them against from the rent coming due. Such a term would be a variation or amendment to the tenancy agreement requiring payment of \$1575.00 on first of each month. By section 5(3) of the *Residential Tenancy Act* (the "Act"),

(3) A term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

It has been determined that where a written tenancy agreement has not been prepared, the terms of it have not been "expressed in a manner that clearly communicates the rights and obligations under it" and is not enforceable: (*Darbyshire v. Residential Tenancy Branch (Director)*, 2013 BCSC 1277). It follows that an unwritten variation in the terms of a tenancy agreement is not enforceable either.

In any event, the terms alleged by the tenants are not clear and they are not likely. The tenants would have it that they could have charged any amount and offset it from rent without the necessity of the landlord's agreement. While there may have been discussion about offsetting the value of renovation work from rent, I consider it most likely and reasonable that the offset would only have occurred after the parties agreed on the amount to be offset against each rent payment.

In regard to the tenants' monetary claim, I regret to say that I consider that I am without jurisdiction to adjudicate it and that they will have to seek compensation in the courts. The tenants are seeking money for services renders as renovators, it is only a collateral fact to their claim that they are also tenants. A regular renovator could not apply to the Residential Tenancy Office to recover payment for his or her services and I don't see why these applicants should be able to do so just because they are the tenants of the debtor. The matter would be different if there was shown to be an agree amount due for renovation services rendered and an enforceable agreement to offset it from rent.

I regret this finding because the tenants appear to have been acting in good faith throughout their tenancy but will now have to start another procedure in a different and new forum.

Conclusion

Despite my view that the landlord owes the tenants money for the renovation, I am bound to award the landlord \$5400.00 in unpaid rent and recovery of the \$100.00 filing fee. He will have a monetary order in the amount of \$5500.00.

Normally I would authorize the landlord to retain the security deposit in reduction of the amount awarded, but that might lead to payment of an amount not due to him after the tenants' claim is assessed. I therefore specifically direct that the security deposit and pet damage deposit totalling \$1575.00 be held by the landlord until September 1, 2014. If the tenants or either of them have issued and served the landlord with the originating documents from either the Provincial Court or Supreme Court, then I direct that the landlord must obtain the authorization of either a Residential Tenancy Arbitrator or a judge to apply any deposit money against this award. The tenants are free to apply to the court to have the deposit money paid into court or for similar relief.

If the landlord has not been served with originating documents from a court by September 2, 2014, he is free to apply the deposit money against this award or any remainder as of that date.

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: August 22, 2014

Residential Tenancy Branch

