



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OPR, MNR & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. I have carefully considered the oral testimony of the parties and the written submissions that summarized the evidence.

The written evidence presented by the tenant is not credible. It states that the tenants never received the "10 Day Notice to End Tenancy." The landlord produced a video which shows the tenant holding the 10 day Notice to End Tenancy.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant(s) on September 9, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was personally served on the Tenant(s) on September 23, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

- d. Whether the tenants are entitled to A Monetary Order and if so how much?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on June 1, 2008. The present rent is \$822 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$375 at the start of the tenancy.

On August 31, 2014 the tenants returned home to discover that a flood had occurred. The tenant testified the flood damaged many of his belongings. He blames the landlord for the flood. The tenant(s) withheld the rent for the months of September, October and November and the sum of \$2466 remains outstanding. In addition the tenants owe \$75 for three late fees (\$25 each) for a total of \$2541. The tenant(s) continue to live in the rental unit.

Analysis

Section 26(1) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 provides as follows:

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

...

- (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

The Residential Tenancy Act does not permit a tenant to withhold the rent until the tenant has obtained an order from an arbitrator permitting him to do so or they have spent the money on an emergency repair even if the landlord was at fault. Further, the tenant must file an Application for Dispute Resolution to dispute the Notice to End Tenancy. If the tenant fails to do so the Act provides that they are conclusively presumed to have accepted the tenancy ends on the effective date of the notice and they must vacate the rental unit by that date. The tenants filed an Application for Dispute Resolution claiming a monetary order but they did not seek an order cancelling the 10 day Notice to End Tenancy.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Accordingly, I granted the landlord an Order for Possession on 7 days notice.

The tenants are long term tenants. I set the effective date of the Order for Possession for 7 days after service rather than the normal 2 days.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of September, October and November and the sum of \$2466 remains outstanding. In addition the tenants owe \$75 for three late fees (\$25 each) for a total of \$2541. **The landlord has established a claim of \$2541 plus the sum of \$50 in respect of the filing fee for a total of \$2591.**

Tenant's Claim:

The Application for Dispute Resolution filed by the tenants seeks a monetary order in the sum of \$1000.

Briefly, the relevant evidence relied on by the tenants is as follows:

- On August 31, 2014 they returned from shopping to discover water half of an inch deep was all around the kitchen, corridor, bathroom and in the living room. The tenant testified he immediately called the manager who doesn't live in the building but he did not receive a response. They had previously experience situations where the landlord failed to respond in a timely manner.
- The flow of water periodically stopped and resumed again.
- The landlord and plumber attended at the tenant's unit on September 2, 2014 and the tenant told the landlord of the problem at that time. The plumber repaired the sewerage system and as a result an old "P" trap was changed.
- The tenant's evidence indicates he does not know what caused the blockage.
- The tenant stated many of his personal belongings have been destroyed. However, the tenants failed to present evidence to quantify the loss for each item.

Briefly, the landlord's evidence is as follows:

- The tenant was served with a copy of the 10 day Notice to End Tenancy on September 9, 2014.

- The tenant failed to advise him of the water problem. He attended with the plumber on September 2, 2014 as there was leaking in the basement. They were in the process of knocking on the doors of tenants to try to locate the problem when the tenant first indicated he had a problem.
- The landlord did not cause the flood and the landlord hired a plumber as soon as they had knowledge of it.
- The tenancy agreement provides the tenant must carry their own tenant's insurance which they failed to do.
- The landlord's phone records indicate the tenant did not attempt to contact him or his emergency contact person on August 31, 2014.
- The plumber was able to successfully eliminate the blockage by using a snake from the tenant's unit. The landlord submits this is evidence that the blockage was caused by the tenant.
- The problem with the tenants' unit was caused by the tenants failure to properly clean and maintain the rental unit.

Analysis:

Policy Guideline #16 includes the following:

"Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected."

After carefully considering the disputed evidence I determined the tenants have failed to prove the blockage was caused by the landlord's negligence. It is possible the blockage was caused by the tenants themselves or by some other tenant in the rental property. As a result I dismissed the tenant(s) claim for damage to their belongings. Further, the

tenants failed to produce evidence to quantify their loss. It is impossible to determine from the evidence presented what loss was suffered by the tenants.

However, there is insufficient evidence to prove the blockage was caused by the tenants. As a result I determine it was the landlord's responsibility to remediate the rental unit. The landlord failed to do this. I determined the tenants are entitled to \$500 for the reduced value of the tenancy caused by the landlord's failure to properly remediate the water damage to the rental unit. The failure to properly dry such damage will result in risk of mould and will reduce the enjoyment of the rental unit.

Conclusion:

The landlord was given an Order for Possession on 7 days notice. I determined the landlord established a claim against the tenants in the sum of \$2591. The tenants have established a claim against the landlord in the sum of \$500. After setting off one claim against that of the other I ordered the tenants to pay to the landlord the sum of \$2091.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court 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: November 07, 2014

Residential Tenancy Branch

