



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KING ALBERT APARTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *CNR, MNDC, OLC, FF*

Introduction

This hearing dealt with applications by the tenant for an order to set aside a notice to end tenancy for nonpayment of rent and for the landlord to comply with the *Act*. The tenant also applied for a monetary order for compensation for the loss of quiet enjoyment and for the recovery of the filing fee.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony. The tenant filed evidence that consisted of hand written accounts of events. I informed the tenant that most of the evidence was illegible and therefore too difficult to read.

The tenant had made prior application for dispute resolution for an order directing the landlord to carry out repairs and for compensation for the loss of the value of the tenancy due to the lack of action on the part of the landlord to complete repairs. A hearing was scheduled for June 17, 2014. The landlord did not attend. The tenant filed into evidence a copy of the decision dated June 18, 2014.

The Arbitrator awarded the tenant rent abatement for unfinished repairs and this abatement was granted retroactively to the start of tenancy. The monthly rent was reduced by \$225.00 until the landlord completed the repairs listed in the decision. The tenant was awarded \$1,557.50 which included the rent abatement for the months prior to the hearing on June 17, 2014, (December 2013 to June 2014) plus the filing fee.

The Arbitrator considered imposing an additional rent reduction from future rents to satisfy the monetary award of \$1,557.50, granted to the tenant. The tenant indicated to the Arbitrator that he was considering whether to continue in the tenancy and since the Arbitrator was unable to determine the length of time that the tenancy would continue for, found it appropriate to award the tenant the amount determined during the hearing, in the form of a monetary order instead of further reductions in rent.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy began in December 2013. The monthly rent is \$750.00, due on the first of each month.

The landlord testified that pursuant to the order to complete a list of repairs, he sent maintenance workers to the rental unit. The landlord agreed that the tenant granted entry on two occasions but refused to allow the workers in on other dates because the landlord had not given him at least 24 hours notice. The landlord filed statements from the workers. One of the items on the list was to clean the stove and oven. A statement from the person tasked with this job states that she was allowed to enter the unit, but not allowed to clean the stove after she remarked that the stove needed to be wiped down. The landlord testified that the tenancy is almost a year old and the tenant uses the stove, but still requests that the stove be cleaned by the landlord.

Another statement for a maintenance worker states that he was met with verbal abuse by the tenant when he visited to carry out repairs.

The landlord testified that efforts to complete the list were hampered by the tenant. The tenant denied being uncooperative and stated that the landlord contravened the *Act* by not providing appropriate notice. The tenant also denied allegations of being verbally abusive to the landlord's maintenance staff.

The tenant stated that the landlord owed him money as awarded to him by the Arbitrator and therefore he withheld rent for September, October and November 2014. On October 07, 2014, the landlord served the tenant with a notice to end tenancy for nonpayment of rent. The tenant disputed the notice in a timely manner. The tenant agreed that he withheld rent in the reduced amount of \$525.00 per month to satisfy the monetary order and paid off the balance of \$17.50 to the landlord.

The landlord stated that the rent could have been reinstated to the full amount, had the tenant allowed the landlord to carry out repairs. I explained to the landlord that this hearing was convened to address the tenant's application and he was at liberty to make an application of his own to recover rent and discuss the length of time that the tenant was entitled to a rent reduction for incomplete repairs.

The landlord agreed to complete the list of repairs that he was ordered to carry out, by the end of November 2014. The landlord further agreed to provide at least 24 hours notice to the tenant of appointments made for maintenance staff to carry out the repairs.

The tenant has made an application for compensation in the amount of \$5,000.00 for the loss of quiet enjoyment. The tenant testified that he was instructed by staff at the Residential Tenancy Branch Office to enter a dollar amount of his claim, on his application and he chose to apply for \$5,000.00. The tenant testified that the lack of completion of the repairs was the reason he was unable to enjoy his rental unit.

Analysis:

Section 26 (1) of the *Residential Tenancy Act* addresses rules about payment and non-payment of rent. It states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulation or the tenancy agreement, unless the tenant has a right under this *Act*, to deduct all or a portion of the rent.

As per the decision dated June 18, 2014, the tenant chose to accept a monetary order for the award instead of an additional monthly rent reduction, because he was unsure of when the tenancy would end. Accordingly the tenant was awarded a monetary order and was instructed that if the landlord failed to pay the order, he could enforce the order in the Provincial Court.

Despite having a monetary order in his possession and being made aware of how to enforce the order, the tenant chose to enforce the order by withholding rent to satisfy the monetary order. Pursuant to section 26, the tenant did not have a right to deduct all or a portion of the rent.

Based on the sworn testimony of the both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on October 07, 2014 and did not pay rent within five days of receiving the notice. Accordingly, I uphold the notice to end tenancy.

During the hearing, the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. 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.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Such interference might include intentionally removing or restricting services to the tenant.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

The tenant stated that he lost quiet enjoyment of the rental unit due to the incomplete repairs. These issues were addressed in a decision dated June 18, 2014 and the tenant was granted a rent reduction of \$225.00 per month. Since the tenant has already been compensated for his loss of quiet enjoyment, his application for \$5,000.00 is dismissed.

Since the tenancy is ending, the tenant's application for an order directing the landlord to complete repairs is moot.

The tenant has failed to prove his case and must therefore bear the cost of filing this application.

The landlord is at liberty to file his own application for a monetary order for unpaid rent.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. The tenant's applications are dismissed.

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 17, 2014

Residential Tenancy Branch

