



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CREEKPARK TOWN HOUSES, BAYSIDE PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC MNDC

Introduction

This hearing was convened in response to an application by the tenant to cancel a notice to end tenancy for cause and for a monetary order for loss. The tenant and 3 agents for the landlord participated in the teleconference hearing.

The tenant did not submit any documentary evidence aside from the notice to end and a 2 page request to the landlord for compensation. The parties acknowledged the landlord served 35 pages of their evidence on the tenant by registered mail. I found that the tenant and the landlord were served with the evidence of the other.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the tenant entitled to a monetary amount?

Background and Evidence

On September 15, 2014, the landlord served the tenant with a notice to end tenancy for cause with an effective date of October 31, 2014. The notice indicates that the reason for ending the tenancy is as follows:

- (1) Tenant is repeatedly late paying rent.

Landlord's Evidence in support of Notice to End for Cause

The landlord provided sworn testimony, and, document evidence consisting of the tenant's ledger of rental payments – *Statement of Rental Accounts*, a letter to the tenant dated March 10, 2014 notifying them that the rent payable March 01, 2014 was due and remained unpaid, a 10 Day Notice to End for non payment of rent dated May 08, 2014 stating unpaid rent for April and May 2014, a 10 Day Notice to End for non payment of rent dated July 09, 2014 stating unpaid rent for July, 2014, tenant ledger information that August 2014 rent was paid late and subsequently unpaid due to insufficient funds on account, and a 10 Day Notice to End for non payment of rent dated September 05, 2014 stating unpaid rent for September 2014 – with the aggregate result that the tenant effectively has been late paying rent 6 times / months from March to September 2014.

In the hearing, the landlord orally requested an order of possession effective November 30, 2014 as they accepted the tenant's rent for November 2014.

Tenant's Response

The tenant provided sworn testimony. The tenant did not dispute the landlord's evidence in respect to the payment of rent, other than if the landlord had compensated them as requested they would not have been late in their payment of rent for July 2014.

Tenant's evidence for monetary claim

The tenant provided sworn testimony. The tenant also provided a 2 page narrative addressed to the landlord, dated June 20, 2014. The narrative requested of the landlord that they be compensated for a purported event 4 months prior, in which the tenant claims they endured water ingress into their unit from a water leak. The tenant claims they expended some 80 hours over 40 days to maintain their unit free of water, inclusive of the use of a shop vacuum 2 hours per day, and drying apparatus 24 hours per day for 40 days. The tenant claims \$2200.00 inclusive of personal compensation, for loss, as well as carpet cleaning and furniture displacement. The tenant claims they alerted the landlord, who inspected their unit – stating, at first, 2 weeks later, then testified it was 10 days later. The tenant claims they borrowed the shop vacuum from an acquaintance, and could provide an affidavit from a witness. The tenant acknowledged they could have provided additional evidence, but did not. The tenant testified that they did not involve the landlord ongoing because their rent was in arrears.

Landlord's response

The landlord provided sworn testimony. The landlord also provided a narrative of events

dated March 15, 2014, and a series of plumber and landlord invoices for work performed in the tenant's neighbouring suite (#27) in relation to a water ingress event. The landlord testified that in February 2014, after 2 failed attempts to isolate the source of some water ingress they determined that water was entering the neighbour's unit (#27) from a compromised water pipe in a common wall between the tenant's unit and the neighbour. The landlord testified that due to an elevation differential the water pooled in the neighbour's unit and that is where the remedial work ultimately focused – for which the landlord provided evidence.

The landlord testified that early in the water related problem they were alerted by the neighbour's unit that the applicant tenant was also experiencing some water ingress and they "immediately" inspected the tenant's unit and found an area which was damp comprised of about 3 square feet from the common wall. At the time the tenant informed the landlord they had been using a shop vacuum and a fan to deal with any water. The landlord then proceeded to obtain the help from a roofer who confirmed some water ingress from the roof and made the necessary roof repairs.

However, some days later the neighbouring suite #27 still indicated a water ingress and, a plumber now determined that the source of the water ingress was from the common wall of the 2 units but that the elevation difference allowed water into #27; but upon confirmation, not into the tenant's unit. The landlord determined, "the carpet was mostly dry and no mold was present". Subsequently the tenant's unit did not show any signs of dampness, mold, or carpet, wall or cabinet damage.

Analysis

I find that the *Residential Tenancy Policy guidelines* suggest that 3 late payments are the minimum number sufficient to justify a notice to end for cause. I find that the notice to end tenancy is valid on the basis that the tenant failed to pay the rent when due 6 times / months from March to September 2014. As a result, I find the landlord is entitled to an order of possession upon request following provision of the notice. I find the landlord orally requested an **order of possession** in the hearing, and I accordingly must grant the order. I accept the landlord's request for the order to be effective **November 30, 2014**. The tenant's application to cancel the landlord's notice is effectively **dismissed**.

In respect to the tenant's claim for loss resulting from water ingress. Despite the tenant's lack of more effective evidence to support their claim and their burden of proof, I find that the landlord's documentary evidence in response: *Summary of events* – does not effectively outline the *events* of this matter through a listing of dates - which may

have provided an avenue into comparing the parties' contrasting arguments and credibility respecting dates, times, and duration of events. I also find the landlord did not provide an invoice for the roofing repairs - which, again, would have provided some understanding into what work was performed, and more importantly, when. As a result, on balance of probabilities, I find the evidence is that the tenant's account of events combined with the landlord's acknowledgement of a roofing problem – and roof repairs between the plumbing interventions – supports that some water ingress into the tenant's suite occurred resulting in what the landlord found to be an area of dampness in the tenant's unit at the common wall of the 2 suites. However, it must be noted I do not find that the tenant has provided sufficient evidence to support the scope and magnitude of their claim. As a result of all the above, I grant the tenant nominal rent abatement in the amount of **\$100.00**. The balance of claims by the tenant is dismissed.

Conclusion

The tenant's application to cancel the landlord's notice to end for cause is **dismissed**. The tenant's application for loss is, in part, granted in the set amount.

I grant the landlord an **order of possession** effective **November 30, 2014**. 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.

I grant the tenant a **monetary order** under Section 67 in the amount of **\$100.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 12, 2014

Residential Tenancy Branch

