



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR RP ERP RR PSF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- b) To do emergency and necessary repairs pursuant to sections 32 and 33;
- c) To allow the tenant to reduce rent for repairs not done and for facilities not provided; and
- d) For a monetary order as reimbursement for repairs;

Service:

The Notice to End Tenancy is dated November 19, 2014 to be effective November 29, 2014 and the tenant confirmed it was served posted on the door. The tenant /applicant gave evidence that they the Application for Dispute Resolution was served by registered mail and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent so sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that the landlord has not done necessary repair and maintenance contrary to sections 32 and 33 and if so, is the tenant entitled to compensation or a rent rebate?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in July 28, 2014 for a fixed term to expire on July 28, 2015, rent is \$950 a month and a security deposit of \$475 was paid in July 2014. The landlord served a Notice to End Tenancy as rent due on October 28, 2014 was unpaid. The landlord agreed that the tenant paid for November and December rent by money order dated November 24, 2014. Receipts were issued by the landlord but with no limitation that

acceptance of the rent was 'for use and occupancy only' and not to reinstate the tenancy. The landlord raised the issue of the tenant's use of security cameras but this was not part of an application so I declined to consider it.

The tenant submitted copies of emails to the landlord requesting him to pick up the rent as agreed. He said the landlord for some reason did not take the rent, although he had visited the home in October and November concerning a bathtub repair. The tenant provided a list of complaints concerning the landlord and asks for compensation of \$950. He stated he needed fire extinguishers but is not asking for compensation for that. He also states he needs a fire escape, a tree trimmed back because of interference with power lines, and a key for the laundry and electrical room. He said he is not requesting compensation for smoke detectors but needs the taps in the bathtub fixed because they run constantly and the landlord was informed of this in October 2005 but did not turn off the water so they could be repaired. He asks for an Order that the landlord repair the taps in the bathtub and that he lock the laundry and electrical room and provide keys for they are open to the public in this location which is not safe.

In evidence are rent receipts, many emails concerning rent payments, copies of bank drafts, the tenancy agreement and photographs. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

Order of Possession:

A Notice to End Tenancy dated November 19, 2014 was issued for unpaid rent of \$950 due on October 28, 2015. I find the tenant paid this rent and also December's rent by money order dated November 24, 2014. I find the landlord subsequently accepted this rent without issuing any receipt limiting the acceptance 'for use and occupancy only'. By doing so, I find the intent of the parties becomes an issue as the tenant apparently thought their tenancy was continuing as he had paid all rent owing. I find the landlord by accepting this future rent without limiting it 'to use and occupancy only' reinstated the tenancy, making his notice of no effect. Therefore, I find the landlord is not entitled to an Order of Possession. As discussed in the hearing, the landlord is at liberty to issue further Notices as required, keeping in mind the legal requirements.

In respect to the tenant's claims, the onus is on him to prove on a balance of probabilities that he is entitled to the compensation or orders claimed. As discussed in the hearing, the necessity for fire escapes and trimming of trees for hydro lines needs to be discussed with the relevant authorities such as the City or BC Hydro. I find the tenant stated he did not want compensation for fire extinguishers or smoke detectors so I decline to consider these further. Regarding his request for an Order that the landlord

repair leaking faucets in the bathtub, I find the weight of the evidence is that these faucets leaked in October and are still leaking. I find he is entitled to an order that the landlord repair these pursuant to section 32 of the Act and to some compensation for the months that the tenants have suffered this lack of repair due to the landlord's neglect. I find them entitled to a rent rebate of \$50 a month for October to December due to the constantly dripping bath faucets. I also find their evidence credible that this neighbourhood may have safety issues and they need locks on the laundry door and electrical room so vagrants or others cannot freely enter. The tenant's evidence is supported by the landlord stating that the laundry and electrical room are never locked.

Conclusion:

The tenant's application is successful. The Notice to End Tenancy dated November 19, 2014 for unpaid rent is hereby set aside and cancelled. No filing fee is involved.

I HEREBY ORDER that the landlord repair the leaking faucets in the tenant's bathtub by December 31, 2014. I order that the tenant is granted a further rebate of \$50 a month for every month after January 1, 2015 when the faucets are not repaired.

I HEREBY ORDER that the tenant is entitled to a rebate of \$50 each month for October, November and December 2014. I HEREBY ORDER that the tenant may recover the rebate by reducing his rent for January 2015 to \$800. (\$950-\$150).

I HEREBY ORDER that the landlord for safety put locks on the laundry and electrical room doors and supply keys to the tenants.

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: December 18, 2014

Residential Tenancy Branch