



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, MNSD, PSF, RP, RR, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

This application was subject to an amendment on 7 November 2014. The application forms are unclear as they have been altered several times. Further, the tenant advised me at the hearing that repairs had been made to the rental unit. On this basis, at the outset of the hearing I asked the tenant who appeared to confirm which issues were before me. The tenant confirmed that the following issues were before me:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

I confirmed with the tenant that she was withdrawing the tenants' claims with respect to the repairs, services and facilities, and damages. The tenant confirmed she was withdrawing these claims. I amended the application accordingly.

The tenant GH appeared for the tenants and the landlord appeared. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the hearing the landlord made an oral request for an order of possession.

Preliminary Issue: Validity of 10 Day Notice to End Tenancy for Unpaid Rent

On 1 November 2014, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent for rent due 1 November 2014. This notice was invalid because it was issued too early.

On 5 November 2014, the landlord posted a second 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door. The tenant GH testified that she received the 10 Day Notice. In accordance with sections 88 and 90 of the Act, I find that the 10 Day Notice was deemed served on 8 November 2014, the third day after its posting.

The 10 Day Notice contained a defect in that the date given for the notice was 5 November 201~~3~~. The landlord testified that she intended the date to read 5 November 201~~4~~. The landlord pointed to her previous notice, dated 1 November 2014 as evidence of her intent with respect to year. The landlord testified that she has been under great stress dealing with her mother's ill health and that it was a mistake on her part.

Subsection 68(2) of the Act allows me to amend a notice given under the Act that does not comply with the Act. In this case, the 10 Day Notice purports to be issued almost a year before the rent was due. This is obviously a mistake on the landlord's part, but a mistake that does not go to the substance of the 10 Day Notice. The tenants ought to have known that the 10 Day Notice was issued in 2014. For these reasons, I am exercising my discretion to amend the 10 Day Notice to the correct issue date of 5 November 2014.

Preliminary Issue: Service of Dispute Resolution Package

On 9 November 2014, the tenants delivered the dispute resolution package to the landlord's mother. The mother of tenant GH witnessed this delivery. The landlord's mother owns the rental property. The landlord's mother suffers from dementia. The landlord has power of attorney to deal with her mother's rental property. The landlord testified that the tenancy agreement is between the tenants and the landlord, not the landlord's mother; however, I find that the landlord induced the tenants' error. In the 10 Day Notice, the landlord listed the landlord as "[Landlord's Name] (for [Landlord's mother's name])" and the address listed on the 10 Day Notice is the landlord's mother's. The landlord did receive notice of this hearing. As such, I find that the landlord was served with the dispute resolution package in accordance with section 89.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? Are the tenants entitled to a reduction in rent for a reduction in the value of the tenancy agreement? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The relevant aspects of the both the tenants' claim and my findings around it are set out below.

On or about 21 October 2014, sewage began to seep into the yard of the rental property. On 1 November 2014, the tenant NZ notified the landlord of the problem. The landlord testified that she telephoned companies to deal with the problem, but as it had been raining, several properties were experiencing similar problems and no companies were able to deal with their problem immediately. The landlord testified that her brother-in-law was able to attend at the rental unit to make some of the necessary repairs. The landlord testified that the repairs were complete within two weeks of the tenants notifying the landlord of the issue.

The tenant did not provide any evidence that indicated the sewage problem was caused by the landlord. The tenant testified that she was unable to live in the rental unit for three weeks because of the smell from the sewage and the fact that there was sewage bubbling up in the yard. The landlord testified that she saw the tenant at the rental unit

in the time period the tenant alleges she was unable to use the property. The landlord said that the facilities within the home were usable while the septic system was being repaired.

Analysis

The landlord provided notice to the tenant to end the tenancy on the basis of section 46 of the Act. Pursuant to subsection 46(1) landlord may end a tenancy if rent is unpaid on any day after the day it is due.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 33 of the Act allows tenants, in specific circumstances, to deduct amounts from rent that the tenants have paid in order to make emergency repairs to the rental unit. The tenants have not claimed that they made any repairs. Accordingly, the tenants were not entitled to deduct any amount from rent.

The tenants' rent was due 1 November 2014 and the tenants failed to pay this rent. Accordingly, I dismiss the tenants' application to cancel the 10 Day Notice.

Pursuant to section 55, where an arbitrator dismisses a tenant's application or upholds the landlord's notice and the landlord makes an oral request for an order of possession at the hearing, an arbitrator must grant the landlord an order for possession. As the tenants' application is dismissed and the landlord has made an oral request for an order of possession, I am obligated by the Act to grant the landlord an order of possession.

I find that the landlord did not cause the sewage issue. When notified about the issue, the landlord took immediate steps to remedy the situation. As such, the tenant is not entitled to compensation.

For these reasons, I dismiss the tenants' claim without leave to reapply.

As the tenants have not been successful in this application they are not entitled to recover their filing fee from the landlord.

Conclusion

I dismiss the tenants' claim without leave to reapply.

At the hearing, the landlord requested an order of possession if the tenants' application to cancel the 10 Day Notice was dismissed.

I grant an order of possession to the landlord effective **two days after service of this order** on the tenant(s). Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the *Residential Tenancy Act*.

Dated: December 1, 2014

Residential Tenancy Branch

