Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metrix Capital Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF, CNR, MNR, MNDC, RR

Introduction

There are applications filed by both parties. The landlord seeks an order of possession and a monetary order for unpaid rent and recovery of the filing fee. The tenant seeks more time to make an application to cancel a notice to end tenancy and if successful an order cancelling the notice to end tenancy issued for unpaid rent, a monetary order for the cost of emergency repairs, a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, an order allowing the tenant to reduce rent for repairs services or facilities agreed upon but not provided and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The landlord confirmed receipt of the tenant's notice of hearing package. The tenant states that he did not receive the landlord's notice of hearing package, but has confirmed receipt of the landlord's documentary evidence. The landlord states that the tenant was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on January 20, 2015. The landlord has submitted a copy of the Canada Post Customer Receipt Tracking number as confirmation of service. The tenant clarified that he did receive a notice of attempted service from Canada Post, but stated that he did not go pick it up as he did not know who had sent it.

The tenant confirmed that he received a notice of attempted service card from Canada Post for a Registered Mail Package containing the landlord's notice of hearing package, but that he did not pick it up. In accordance with sections 89 and 90 of the Act, I find that the tenant was duly served with the landlord's dispute resolution hearing package including notice of this hearing on February 4, 2015. The details of the landlord's application for dispute and nature of dispute were read to the tenant during the hearing. The tenant stated that he understood the landlord's application and confirmed receipt of the landlord's documentary evidence.

The tenant states that he submitted a documentary evidence package with the tenant's notice of hearing package to the landlord. The tenant states that in addition to a copy of the 10 day notice to end tenancy dated January 8, 2015, the tenant submitted 3 typed letters dated January 12, 13 and 14 of 2015 from witnesses. The landlord states that other than the notice of hearing package, the landlord did not receive any other documents. The tenant stated that the package included the letters, but he does not have any proof of service.

The tenant's letters were read to the landlord's agent and admitted into evidence. Although the tenant did not have any proof of service, I found in reviewing the tenant's letters offered no prejudicial material against the landlord if accepted. The landlord's agent stated that he wished that he had a chance to review these letters and refute if necessary, but stated that it did not seem relevant at that time.

The tenant states that he submitted to the Residential Tenancy Branch his documentary evidence two days prior to the hearing and the landlord's copy the morning of the hearing date. The landlord states that he does not have any documentary evidence from the tenant.

Residential Tenancy Branch Rules of Procedure states,

> **3.14 Evidence not submitted at the time of Application for Dispute Resolution**
> Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.
> In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the Arbitrator will apply Rule 3.17.
> **3.15 Respondent's evidence**
> To ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible.
> The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch Rules of Procedure
> Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

I find based upon the tenant's direct testimony and that of the landlord that the tenant's documentary evidence was not properly served allowing the landlord an opportunity to respond to the documentary evidence and find that this would be prejudicial to the landlord. The tenant's late documentary evidence is excluded and not considered for this decision.

The landlord seeks an order to amend the tenant's application for two names. The tenant's application included a Ltd. Company which the landlord states was not party to the signed tenancy agreement. The tenant disputes this stating that he issued rent cheques in the name of Ltd. Co. every month and that the Ltd. Co. was a tenant. The landlord also seeks an order to amend the tenant's application as it also names two of the landlord's personally when the signed tenancy agreement was made in the Corporations name. The tenant also disputes this claim stating that the two named individuals are the owners of the rental property. The landlord disputes this correcting that the corporation is the owner of the rental property and that the two named individuals are directors.

Residential Tenancy Branch Policy Guideline #23 speaks to amending an application for dispute states,

> **Adding or Removing a Party**
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> Where both parties are present at the hearing and both parties consent, the arbitrator may add another party or remove a party from the application so long as the party added has consented to be added. If the party removed is an applicant, that party must consent to be removed.
>
> The arbitrator may, at the request of the applicant, dismiss the application with leave to reapply in order to allow the applicant to add or remove a party.
>
> An arbitrator will not add a person, business, or limited company as a party without that party's consent if that party is not named on the application for arbitration and is not properly served.
>
> If a landlord is entitled to claim compensation from an overholding tenant under the Act, and the new tenant brings proceedings against the landlord to enforce his or her right to possess or occupy the rental unit that is occupied by the overholding tenant, the landlord may apply to add the overholding tenant as a party to the proceedings.

I find based upon the submissions provided by both parties that the tenant's application shall remain as is. Any orders issued shall reflect the named participants of that successful application filed by that party.

Preliminary Matter(s)

Is the tenant entitled to more time to make an application to cancel a notice to end tenancy?

The tenant filed an application for dispute resolution on January 15, 2015 requesting more time to make an application to cancel a notice to end tenancy. The tenant's written details state that the notice dated January 8, 2015 was received on January 8, 2015. The tenant had 5 days to pay all of the rent or file an application for dispute resolution which is January 13, 2015. The tenant states that the reason for the request is because he was still gathering his evidence.

Residential Tenancy Policy Guideline #36 speaks to extending a time period. An Arbitrator may extend or modify a time limit established by the Residential Tenancy Act only in exceptional circumstances. An Arbitrator may not extend the time limit to apply for dispute resolution beyond the effective date of a notice to end tenancy and may not extend the time within rent must be paid without the consent of the Landlord. "Exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an Arbitrator to extend that time limit.

In this case the tenant/applicant has not provided any "exceptional" reasons as to why the application could not be filed within the allowed time frame other than to state that there was substantial copying and the organizing of the tenant's application. The tenant's application was made 2 days late past the allowed timeframe and the tenant's documentary evidence for which the delay took place was not served upon the RTB or the landlord until just before the hearing date. The tenant's application for more time is denied.

I find that as the tenant's application to cancel the notice to end tenancy is dismissed. The notice to end tenancy dated January 8, 2015 issued for unpaid rent is upheld. The landlord's request for an order of possession based upon the 10 day notice to end tenancy issued for unpaid rent dated January 8, 2015 is granted. The landlord is granted an order of possession. He 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.

The tenant/applicant stated during the hearing that he also seeks recovery of costs associated with the Arbitration for postage, photocopying and the submission of digital evidence.

Section 72 of the Act addresses **Director's orders: fees and monetary order.** With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation (postage, photocopying and the submission of digital evidence)to either party to a dispute. Accordingly, the tenant's claim for recovery of litigation costs are dismissed.

As the tenancy is at an end the tenant's request to be allowed to reduce rent is dismissed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on April 15, 2006 on a fixed term tenancy ending on May 1, 2007 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement dated April 9, 2006.

The monthly rent is $1,410.00 payable each month and a security deposit of $640.00 was paid on April 9, 2006.

Both parties confirmed that the landlord served the tenant with a 10 day notice to end tenancy issued for unpaid rent dated January 8, 2015 by posting it to the rental unit door on the same date.

The landlord seeks a monetary claim of $2,115.00 which consists of unpaid retn of $705.00 for January 2015 and $1,410.00 for February 2015. The landlord states that the tenant withheld rent of 50% for January of $705.00 due to a dispute with the landlord that the property's exterior was lacking in general maintenance. The landlord states that this was done without the knowledge or consent of the landlord.

The tenant confirmed in his direct testimony that he withheld rent due to a dispute over the landlord's lack of maintenance of the rental property. The tenant confirmed that he did withhold $705.00 from the January 2015 rent and has not paid the February rent of $1,410.00.

The tenant seeks a monetary claim for emergency repairs and money owed or compensation for damage or loss of $5,000.00. The tenant seeks recovery of costs for materials for repairs by the tenant over 8 years to one bedroom, kitchen and a leaking roof. The tenant states that there was black mold in the bathroom and kitchen cupboards.

The tenant states that due to his submission of late evidence which was excluded that he has no evidence. The tenant stated in his direct testimony that he did not have anything in writing authorizing him to make any “renovations” or “repairs”.

The landlord disputes these claims by the tenant stating that at no time has the landlord been notified for emergency repairs over the 8 year tenancy with the tenant. The landlord states that the tenant has even refused access to the landlord to enter the rental unit. The landlord states that the tenant has renovated the rental without his knowledge or consent and that the “renovations” by the tenant are not emergency repairs. The landlord requests that the tenant’s monetary claim be dismissed for lack of evidence.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant failed to pay rent when it was due.

I accept the undisputed testimony of both parties and find that the landlord has established a claim for unpaid rent of $2,115.00. Section 26 of the Residential Tenancy Act states,

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.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

The tenant has breached the Act by withholding rent without consent of the landlord or an order from the Residential Tenancy Branch as per the direct testimony of the tenant. The landlord has established a claim for the total amount of $2,115.00. The landlord is also entitled to recovery of the $50.00 filing fee. I grant the landlord a monetary order under section 67 for the balance due of $2,165.00.

I find that the tenant has failed to provide sufficient evidence to satisfy me that there were any “emergency repairs”. Section 33 of the Act speaks to Emergency Repairs and states,

Emergency repairs

33 (1) In this section, **"emergency repairs"** means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

(a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The tenant has not provided sufficient evidence that the repairs were urgent or necessary. Nor has the tenant provided any evidence that the landlord was notified of any requests for emergency repairs.

In this case of the tenant's monetary claim, I find that the tenant has failed to provide sufficient evidence of damage or loss caused by the landlord. The tenant did not provide sufficient proof to satisfy me that the landlord was properly notified of any emergency repairs or given an opportunity to resolve them. The tenant's monetary claim is dismissed.

Conclusion

The tenant's application is dismissed.
The landlord is granted an order of possession and a monetary order for $2,165.00.

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: February 12, 2015

Residential Tenancy Branch