



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL OLC ERP RP PSF LRE

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 landlord's use of the property pursuant to section 49;
- b) An Order that the landlord comply with the Act and make repairs and provide facilities or services required by law; and
- c) Suspend or set conditions on the landlord's right to enter the rental unit.

Service:

The Notice to End Tenancy is dated June 27, 2015 to be effective September 1, 2015 and the tenant confirmed it was served by posting it on his door. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution by registered mail and the landlord agreed she 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 they need in good faith to end the tenancy in order to have the property for their own use 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 complied with the Act and done repairs and provided services required by law and has entered the tenant's unit illegally?

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 December 2013, it is now a month to month tenancy, rent is \$475 a

month and a security deposit of \$237.50 was paid in December 2013. The landlord served a Notice to End Tenancy pursuant to section 49 for she states she needs the property for her own residence.

The landlord gave evidence supported by her witness that she can no longer afford to rent where she is living and is already two months in arrears of rent. She had her hours cut back at her workplace and cannot afford to rent in a separate residence so she requires this unit for her own use. Her current apartment has been rented to another party effective October 1, 2015.

The tenant contended that he is being targeted because he expressed concern about various problems in the property to local and regional authorities. He said another room was vacant when he was given the Notice to End Tenancy although all the rooms are now occupied. This is a 5 bedroom home shared by a number of tenants. The landlord in answer said she particularly wanted his room for it suited her needs as it has a separate entrance and half bath so she and her pets can come and go as she pleases without interfering with other residents. She said she had occupied this room in the past and knows it suits her best. She has not provided one month's free rent to the tenant yet.

A dispute between these parties was heard on January 20, 2015. At that time, the arbitrator gave the landlord twenty one days to take certain actions. The tenant is applying to have emergency repairs completed and to have services provided. The list of ordered actions was reviewed and certain items have not been completed yet, as follows:

- a) The wax ring on the toilet has not been replaced by a licensed plumber. The landlord said she had hired two people but the tenant would not allow them entry. She provided no documentary evidence of this and the tenant denied it although he said one plumber made an appointment and then cancelled it.
- b) A person cleaned the black mould in the bathroom but the tenant alleges it was not done completely and the basement has not been done at all. The basement entrance is opposite his room door and the smell bothers him and the mould is bad for his health.
- c) The landlord hired a licensed exterminator who treated for rats for three months but it is not sufficient and the exterminator was not hired or paid to treat for fleas which are bothering the tenant's pets excessively. He said all the tenants' pets in the home have flea problems. The landlord said she attempted to spray for fleas but the tenant did not like the stuff she was using. She said she has another appointment for treatment on September 19, 2015 but in any case, pets need to be on a treatment program (as hers are) for they pick up fleas everywhere

outside and from other animals. She said none of the other tenants have complained although they have pets.

- d) The electrical system has not been inspected and repaired. The tenant said he went to the BC Safety Authority and they have served a 21 point list on the landlord. He said he has feared for his safety as there are no covers on the outlet boxes and he had a small fire already. Also the light bulbs burn out continually.

Based on very dysfunctional relationships with former property managers and friends of the landlord, the tenant also requests that the landlord comply with the Act and give proper notice.

Included with the evidence is the Notice to End Tenancy, submissions from both parties and witnesses and the Decision made on January 20, 2015 by another arbitrator.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant; in this case, she requires the property for her own use. I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to her genuine need to occupy the tenant's room. I find her evidence is well supported by her present property manager's evidence of the landlord's financial difficulties and the fact she has to move as she is two months in arrears of rent. Although the tenant alleged he was being targeted due to his complaints as the landlord could have chosen another room for her occupancy, I find insufficient evidence that he is targeted. I find the landlord's explanation credible that she chose this room as it affords her more privacy with its separate entrance and half bath and allows her pets to come and go. For all of the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on September 1, 2015 as stated on the Notice to End Tenancy. Pursuant to section 55 of the Act, I find the landlord entitled to an Order of Possession effective September 30, 2015 as she requested.

In respect to the tenant's request for repairs, I find it is pointless to order repairs now as he is vacating. However, I find he is entitled to a rent rebate for repairs not done as ordered on January 20, 2015. He has continued to live with a smelly bathroom as the wax ring was not replaced and there is a basement with black mould that bothers him

with the smell and possible impact on his health. He also has had concerns for his safety because the electrical inspection and repair was not done as ordered. Considering his rent is \$475 a month, I grant him a rent rebate of \$100 a month for seven months (February to August) in consideration of the impact on him of the lack of repairs as ordered. His tenancy ended on September 1, 2015 so I decline a further rebate. Concerning the fleas on his pets, I find there is insufficient evidence that the landlord through act or neglect caused this flea infestation. The evidence presented shows that most of the tenants have pets and they suffer from fleas; I also note that fleas can be transmitted from other animals outside. I find the tenant not entitled to an order for veterinary visits or a further rebate as there is insufficient evidence that the flea problem is caused by act or neglect of the landlord.

As the tenant has not received one month's free rent as set out in section 51 of the Act for compensation for the Notice to End Tenancy under section 49 of the Act, I combine this \$475 in the monetary order to the tenant. In respect to unauthorized entry, **I HEREBY ORDER that the landlord and any of her agents or contractors provide legal Notice to the tenant as required by section 29 of the Act.**

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on September 1, 2015. An Order of Possession is issued to the landlord effective September 30, 2015 as requested.

I find the tenant entitled to a monetary order as calculated below; no filing fee was involved.

Calculation of Monetary Order:

Rent rebate ordered	700.00
Free month rent section 51	475.00
Total Monetary Order to Tenant	1175.00

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: September 17, 2015

Residential Tenancy Branch

