



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Select Real Estate Property Management Division
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant's application: CNR, MNR, RR
Landlord's application: OPR, MNR, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The tenant attended with her father who testified on her behalf. The landlord's representative called in and participated in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy for unpaid rent be cancelled?
Is the landlord entitled to an order for possession?
Are the tenants entitled to a monetary award and if so, in what amount?
Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is an apartment in a fourplex building in Chilliwack. The tenancy began April 1, 2015. Monthly rent in the amount of \$895.00 is payable on the first of each month. The tenants paid a security deposit of \$447.50 on March 31, 2015.

The landlord testified that the tenants failed to pay the full rent for August and the landlord served the tenants with a 10 day Notice to End Tenancy for unpaid rent by posting it to the door of the rental unit on August 3, 2015.

The tenant said that there is a bedbug problem in the rental unit and the landlord has failed to treat it properly. She testified that her sister, who is the co-tenant, has moved out because of the problem. The tenant said that only half the rent was paid for August because she is unable to pay the full rent by herself. The tenant paid half the rent for

September. The tenant complained that there have been problems at the rental unit since the beginning of the tenancy. The tenant said that there are people using and dealing drugs in and around the rental property. The tenant referred to pictures submitted showing needles and drug paraphernalia found around the rental property.

The landlord's representative testified that on July 8th the landlord received a telephone report from the tenants saying that they thought they had bedbugs in their unit. The landlord called a pest control company the same day. The pest company attempted to contact the tenants on July 14, but was unable to reach them. On July 15th they spoke to the tenants, inspected the rental unit and scheduled an appointment to treat the rental unit on July 21st. The tenants cancelled the appointment and re-scheduled it for the following day. The pest control company attended the following day. The rental unit was treated for bedbugs. A follow up treatment was performed on August 13, 2015. According to a report from the pest control technician, the rental unit was not properly prepared for treatment. The unit was not properly cleaned or vacuumed.

The landlord's representative testified that the tenants were in all likelihood, responsible for the bedbug infestation in the rental unit. She referred to a statement from the owner of the rental property. In June, 2015 he attended to clean and remove items from an abandoned unit at the rental property. He removed furniture, mattresses, clothing and other items. The items were placed in the driveway awaiting removal to the garbage dump. The unit from which they were removed was infested with bugs. According to the landlord, the dining room table and upholstered chairs had been taken by the tenants and placed in their rental unit. At the hearing the tenant's father testified that the furniture was thoroughly cleaned and bug free before it was taken into the rental unit. He denied that the furniture was the source of the bedbugs.

The tenant complained that the conditions at the rental unit were so deplorable that her sister moved out. She said that she was told to stop paying rent because of the terrible condition of the rental unit. The tenant said at the hearing that she was moving from the unit as soon as possible.

Analysis

The *Residential Tenancy Act* provides by section 26 (1) that 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. The *Residential Tenancy Act* permits a tenant to deduct an amount from a rent payment without first obtaining an order only when the tenant has paid for emergency repairs as defined by the Act and the landlord

has not reimbursed the tenant after the tenant has provided written particulars to the landlord. The only other exception to the requirement to pay rent is contained in section 43(5) of the Act; it provides that: If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The tenants have not paid the full rent for August or for subsequent months and they have not established any basis for withholding rent payments; I find that they have not provided evidence of any ground that would excuse them from the obligation to pay rent. The tenants' application to cancel the 10 day Notice to End Tenancy for unpaid rent is therefore dismissed without leave to reapply.

The tenants' claimed for a monetary award consisting of the amount of the security deposit and amounts claimed for groceries, furniture and clothing. I find that the tenant have failed to establish that the presence of bedbugs in the rental unit was due to any fault or negligence on the part of the landlord. It is probable, as suggested by the landlord, that the tenants brought the bedbugs into the rental unit when they took discarded furniture into the unit. The tenants' claim for compensation for the cost of food and furnishings is dismissed without leave to reapply.

I have dismissed the tenant's application to dispute the landlord's Notice to End Tenancy. The landlord made is entitled to an immediate order for possession pursuant to its application and I grant the landlord an order for possession effective two days after service upon the tenants. This order may be registered in the Supreme Court and enforced as an order of that court.

The landlord claimed a monetary award for unpaid rent for unpaid rent for August and September in the amount of \$447.50 for August and \$895.00 for September, for a total of \$1,342.50. According to the evidence before me the tenants have paid \$447.50 on account of September rent. I find that the landlord is entitled to an award in the amount of \$895.00.

The landlord has leave to reapply for additional loss of rental income and if there are additional damages claimed after the rental unit has been vacated.

Conclusion

The landlord has been granted an order for possession and a monetary award in the amount of \$895.00. The landlord is entitled to recover the \$50.00 filing fee for this application, for a total award of \$945.00 and I grant the landlord an order under section

67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

The tenants' application for the return of the security deposit is dismissed with leave to reapply. As noted the landlord has leave to apply to claim additional loss of rent and damages and it may include a claim to retain the tenant's security deposit in a future application.

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 6, 2015

Residential Tenancy Branch

