



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, RP, ERP, OLC, RR, FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the Residential Tenancy Act ("Act"). The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") issued by the landlord, for an order requiring the landlord to make repairs and emergency repairs to the rental unit, for an order requiring the landlord to comply with the Act, for an order allowing a reduction in rent, and for recovery of the filing fee paid for this application.

The tenants, the landlord and the landlord's legal counsel attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary matter- I have determined that the portion of the tenants' application dealing with a request for orders for the landlord and a rent reduction is unrelated to the primary issue of disputing or enforcing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenants' Application and the hearing proceeded on the tenants' request to cancel the Notice. A determination of the remaining portion of the tenants' application will be made at the conclusion of this Decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the landlord's Notice and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement entered into evidence shows that this tenancy began on April 1, 2015, for a monthly rent of \$1600.00 and a security deposit of \$800.00 paid by the tenants.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support their Notice.

The landlord submitted that the tenant were served with the Notice on November 10, 2015, by attaching the Notice to the tenants' door, listing an unpaid rent deficiency of \$1012.00 owed as of November 1, 2015. The effective move-out date listed was November 23, 2015. The tenants submitted the Notice into evidence.

The landlord asserted that since the issuance of the Notice, he has not received rent from the tenants.

The landlord did not submit evidence for this hearing; however, the landlord has filed his own application for dispute resolution set for hearing on another date, for which he has filed evidence.

Tenants' response-

In response, the tenants confirmed that they made a deduction from the monthly rent for November 2015, and submitted that this deduction was made as the landlord was not responsive to their requests for repairs and emergency repairs.

The tenants submitted further since the beginning of the tenancy, they have made multiple requests for repairs and as the landlord failed to make the repairs to or replace the wet carpet, their health and safety were being negatively impacted. As the landlord continued to ignore their requests, they replaced the carpet and deducted that expense from the monthly rent for November 2015, according to the tenants.

The tenants denied not paying rent for December 2015 and January 2016, as the landlord failed to collect the rent, as per usual.

The tenants' additional relevant evidence was a receipt for the carpet replacement and copies of written communication between the parties.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Section 33 of the Act defines emergency repairs as:

- *major leaks in pipes or the roof,*
- *damaged or blocked water or sewer pipes or plumbing fixtures,*
- *the primary heating system,*
- *damaged or defective locks that give access to a rental unit,*
- *the electrical systems, or*
- *in prescribed circumstances, a rental unit or residential property*

Pursuant to section 46 of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days. In this case, the tenants disputed the Notice by filing their application; however, when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I find that the tenants owed the landlord rent when the Notice was issued and that they did not pay all or any of the rent owed to the landlord within five days of receiving the Notice.

I find that the replacement of carpet was not an emergency repair as defined by the Act, especially in light of the fact the issue had apparently been ongoing since April 2015.

I therefore find that the tenants did not establish that they had the legal right to withhold the rent owed.

I therefore find the landlord submitted sufficient evidence to support the Notice. As such, I find the tenancy has ended for the tenants' failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I therefore dismiss the tenants' application seeking cancellation of the Notice.

At the landlord's request, I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenants, pursuant to section 55(1) of the Act. The order of possession is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after it has been served upon them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are advised that costs of such enforcement are recoverable from the tenants.

As I have dismissed the tenants' application seeking cancellation of the Notice and issued the landlord an order of possession, I likewise dismiss the remaining portion of the tenants' application for orders for the landlord and for a reduction in rent, as the tenancy is ending. I also dismiss the tenants' request to recover the filing fee.

Conclusion

The tenants' application is dismissed, without leave to reapply, for the reasons given.

The landlord has been issued an order of possession for the rental unit.

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: January 14, 2016

Residential Tenancy Branch

