



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MND, MNDC, MNSD, CNR, LRE, FF

Introduction

This was a cross-application hearing.

On November 20, 2015 the tenants applied to cancel a 10 day Notice ending tenancy for unpaid rent that was issued and received on November 17, 2015; compensation for the cost of emergency repairs and damage or loss under the Act, that conditions be set on the landlord's right to enter the rental unit property and to recover the filing fee from the landlord.

On November 26, 2015 the landlord applied requesting an Order of possession for unpaid rent, a monetary Order for unpaid rent, compensation for damage to the rental unit property, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenants.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The tenants said that the day prior to the hearing they faxed an 85 page evidence submission to the Residential Tenancy Branch (RTB) with an amended application. The landlord confirmed that on January 17, 2016 she received that package from the tenants.

I explained that the RTB Rules of Procedure, section 2.11 requires a party to amend an application and serve it to the other party no later than 14 days prior to a hearing. In the absence of service of an amended application within the time limit set out in the Rules I declined to amend the tenant's application.

The tenant's confirmed receipt of the landlord's application for dispute resolution, served and received via registered mail, in late November, 2015. The tenant's did not receive the landlord's 65 page evidence submission until January 2nd or 3rd, 2016. The landlord served this evidence via registered mail on December 29, 2015.

The landlord received the tenant's application in November 2015.

I informed the parties that their applications included evidence that would cause me to explore jurisdiction in relation to a portion of each claim made. The parties were told that I would consider the tenant's late evidence submission and a possible adjournment, contingent on my consideration of jurisdiction.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for damage to the property, unpaid rent and damage or loss under the Act?

May the landlord retain the security deposit paid by the tenants?

Are the tenants entitled to compensation for the cost of emergency repairs and damage or loss under the Act?

Should the 10 day Notice ending tenancy for unpaid rent issued on November 17, 2015 be cancelled?

Should conditions be placed on the landlord's right to enter the residential property?

Background and Evidence

The tenancy commenced on September 1, 2013. Rent is \$1,300.00 due on the first day of each month. Pet and security deposits in the sum of \$650.00 each were paid. The landlord said she did not cash the pet deposit cheque and will return it to the tenants.

The tenants confirmed receipt of a 10 day Notice to end tenancy for unpaid rent issued and received on November 17, 2015. The Notice had an effective date of November 30, 2015.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$8,800.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental unit by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

Within five days the tenant's applied to dispute the Notice. The tenants confirmed that with the exception of \$300.00 paid in November 2015, no rent has been paid since April 2015.

During the hearing the tenants confirmed that they owe rent, however they had a verbal agreement with the landlord that from November 2015 onward rent would be reduced to \$800.00 per month. The landlord said that the tenants were considering vacating, so she told them they could pay her the \$800.00 it was going to cost them to live elsewhere, as the landlord not receiving any rent. The landlord said she did not agree that rent should be reduced, only that she would prefer they pay \$800.00 over nothing.

The landlord has claimed \$11,350.00 in unpaid rent owed from May 2015 to January 2016 inclusive.

The balance of the dispute between the parties relates to work completed by the tenants for the landlord. In March 2015 the landlord became aware of a landscaping project the tenants had commenced in the back yard. The landlord then proceeded to reach a verbal agreement with the tenants on completion of this project. The landlord paid material costs directly to suppliers. No wages have been paid. The tenants said they expected to be compensated when the house was sold.

The tenant's application indicates that from May 2015 onward "our rent was covered by my labour" with additional money claimed as owed by the landlord. During the hearing the male tenant explained that the non-payment of rent was not meant as payment in lieu of wages. The male tenant had lost his job and the tenants could not afford to pay rent. These facts were not in dispute during the hearing.

The landlord wishes to be compensated for losses she says she has suffered as a result of a project which must be redone. The tenants wish to be compensated for repairs and landscaping work.

The landlord said the tenants are barring her from entering the backyard of the residential property. The tenants confirmed that they believe there may be issues that could pose a risk to the landlord so they have denied access.

Analysis

I find that the tenants received the 10 day Notice to end tenancy on November 17, 2015; the date confirmed by the tenants.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants received the Notice on November 17, 2015 I find that the earliest effective date of the Notice is November 30, 2015; the effective date provided on the Notice.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on November 30, 2015, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenants submitted an application disputing the Notice but have confirmed the rent was not paid. Therefore, pursuant to section 46(5) of the Act, I find that the tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the Notice; November 30, 2015.

I have rejected the tenant's submission that rent was reduced to \$800.00 per month commencing in November 2015. There was no written agreement altering the sum of rent owed and in the absence of such confirmation I will rely on the tenancy agreement signed by the parties that set rent at \$1,300.00 per month.

Based on confirmation by the tenants during the hearing I find that the tenants have not paid rent from May 2015 to November 30, 2015 plus per diem rent from December 1,

2015 to January 31, 2016 in the amount of \$11,400.00. I have considered per diem rent to January 31, 2016 as it is not likely the landlord will recover the rental unit until then. I find the landlord is entitled to compensation in the sum of unpaid rent claimed on the monetary worksheet supplied with the application; \$11,350.00.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the security deposit in partial satisfaction of the claim. Pursuant to section 62(3) of the Act, I Order the landlord to return the pet deposit cheque to the tenants.

The parties entered into a tenancy agreement, plus they entered into some sort of verbal contract, outside of the tenancy agreement, for work to be completed by the tenants.

RTB policy (#27) sets out the approach to jurisdiction. Policy confirms that the power and authority of the RTB is derived from the legislation. Generally the *Residential Tenancy Act* provides that the Act applies to tenancy agreements, rental units and other residential property.

Section 6(3) of the Act provides:

- 3) *A term of a tenancy agreement is not enforceable if*
(a) the term is inconsistent with this Act or the regulations,
(b) the term is unconscionable, or
(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

The Act does not include remedies related to employment agreements or contracts for work on residential property. Therefore, pursuant to section 6(3)(a) of the Act, I find that the verbal agreement related to the landscaping project is not consistent with the Act and that jurisdiction related to those matters is declined.

The landlord has been granted an Order of possession that is effective two days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of \$10,800.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In relation to access to the residential property, during the hearing I reviewed section 29 of the Act with the parties. A copy of that section of the Act is appended after the conclusion of this decision. There was no evidence before me that would support the tenant's request to set limits on the landlord's right to enter the property. I find that access for entry by the landlord may be made in accordance with the legislation. The landlord may provide notice of entry for anyone who represents her interests.

Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent and per diem rent.

The landlord may retain the security deposit and must return the pet deposit cheque to the tenants.

The landlord is entitled to filing fee costs.

The landlord has the right to enter the residential property in accordance with the Act.

The balance of the claims made by each party is not consistent with the Act; jurisdiction is declined.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 20, 2016

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
 - (i) the purpose for entering, which must be reasonable;*
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*
- (d) the landlord has an order of the director authorizing the entry;*
- (e) the tenant has abandoned the rental unit;*
- (f) an emergency exists and the entry is necessary to protect life or property.*

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

