



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to the tenants' application for an Order to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues; and to recover the filing fee from the landlord for the cost of this application.

The tenant DH and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Procedural Issues – The landlord testified that he sent in some documentary evidence on April 01, 2016. This evidence was not received by the tenants or the Arbitrator prior to the hearing. In considering Rule 3.15, the respondent, the landlord in this case, must submit their evidence so that it is received by the Residential Tenancy Branch ("RTB") and the other party not less than 7 days prior to the hearing, and in this case, the landlord did not. In considering whether to accept the landlord's evidence after the hearing, I find that the landlord delayed in sending his evidence and he provided no proof that he served the evidence. I have therefore excluded the landlord's evidence even if it does turn up before this decision is completed.

Issue(s) to be Decided

- Are the tenants entitled to an Order to cancel the 10 Day Notice to End Tenancy?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that the tenants moved into this unit in June, 2014 and entered into a new written tenancy agreement on May 31, 2015 for a fixed term of two years. This term will expire on July 31, 2017. Rent for this unit is \$1,500.00 per month due on the 1st of each month.

The landlord testified that the tenants failed to pay rent for January, 2016 and a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) was served on February 12, 2016 by posting it to the tenants' door. This Notice informed the tenants that they owe rent of \$1,500.00 which was due on January 01, 2016. The Notice has an effective date of February 26, 2016. The landlord testified that he has since sold the unit to new owners as the bank foreclosed on the property. This sale completed on March 01, 2016. The landlord testified that the tenants still owe rent for January and February, 2016.

The tenant attending testified that the parties had a previous hearing in December, 2015. At that hearing it was determined that the tenants' obligation to pay rent of \$1,500.00 had been changed to \$750.00 by agreement between the parties, due to work completed on the unit by the tenants. In that decision the Arbitrator made a finding the tenants had overpaid their rent for October and November by \$1,500.00. The Arbitrator advised both parties that whenever there has been an overpayment of rent, a tenant has the right to apply the overpayment to rent that becomes due and may direct the landlord to apply that overpayment to future rent.

The tenant testified that they therefore applied the overpayment to January and February's rent as the rent was still agreed to be \$750.00 per month until the landlord's debt to the tenants was paid. The tenant testified that when the Notice was served they did not owe rent to the landlord and therefore the tenants request that the Notice is cancelled.

The tenant testified that when they signed the tenancy agreement the landlord included a clause that states that any agreed upon repairs and/or improvements made by the tenants will be reimbursed by the landlord. The tenant testified that with the landlord's agreement they did construction work on the unit and provided the landlord with copies of all the invoices and receipts for materials used and invoice for the tenants' labour and hours worked doing this construction. The total cost of the construction was \$15,366.60. The landlord and tenants entered into an agreement that the tenants' rent would be reduced to \$750.00 per month until the landlord had reimbursed the tenants for the construction work.

The tenant testified that they started to pay the reduced rent of \$750.00 from August, 2014 to April, 2015; however in May, July, October, November and December the landlord requested that the tenants pay the full rent of \$1,500.00. In June, August and September, 2015 the tenants paid the reduced rent of \$750.00. In total the tenants paid a reduced rent of \$9,000.00 which has been taken off the landlord's debt to the tenants for the construction costs.

By the end of December, 2015 the landlord still owed the tenants \$6,366.60. The tenants did not pay rent for January or February as the previous Arbitrator determined that they had overpaid their rent and so a further amount of \$3,000.00 was deducted from the landlord's debt to the tenants in January and February, 2016. The tenant testified that the landlord now has an outstanding balance owed to the tenants of \$3,366.60. As the landlord sold the unit on March 01, 2016 the tenants now pay rent to the new owners and the landlord's debt to the tenants remains in place. The tenant referred to documentary evidence which was four options sent to the tenants from the landlord concerning their tenancy. In each of these options the landlord agreed to pay the balance of his debt to the tenants from the proceeds of the sale of the unit. The tenant testified that no monies have been received from the landlord and therefore the tenants seek a Monetary Order to recover the amount of \$3,366.60.

The landlord agreed that he had an arrangement for the tenants to do the construction work on the unit and that they could reduce their rent to \$750.00 until the money owed to the tenants for their work was paid. The landlord agreed that he has not fully reimbursed the tenants for their work because on October 14, 2015 the landlord found out the tenants had done the construction work without obtaining the required permits. The landlord testified that he would have to have had the work, done by the tenants, taken down but the tenants would not let him onto the property, so the landlord sold the property on March 01, 2015 and the new owner now assumes all the problems with the construction work.

The landlord agreed he had paid the tenants \$9,000.00 by the reduction in rent and that he has all the receipts and invoices for the construction work completed by the tenants. The landlord disputed that he now owes the tenants the amount of \$3,366.60 as they did not get the permits in place to do the work.

The tenant testified that the landlord told the tenants on October 01, 2014 that he as the property owner would get all the required permits in place. As he is the owner of the property only the landlord could apply for the permits as the tenants did not own a construction company and would not have been able to apply for the permits. The tenant testified that they did not prevent the landlord coming onto the property. The

landlord sent them a notice to entry but then did not run up. The tenant testified that when the new owners purchased the property it passed all inspections and the new owner is now finishing off the construction work. The tenant disputed that the new owners have encountered any problems and testified that the letter they had from the city does not indicate that the construction work will have to be pulled down.

The tenant asked the landlord when the tenants refused the landlord entry to the unit. The landlord responded that he did not record the dates. The tenant asked the landlord what assumed problems the new owners have. The landlord responded that the new owners assumed the responsibility for the trailer.

Analysis

I have carefully considered all the admissible evidence before me, including the sworn testimony of both parties. With regard to the tenants' application to cancel the 10 Day Notice to End Tenancy for unpaid rent; I find that at the last hearing the Arbitrator determined that the tenants had overpaid their rent by \$1,500.00 and that any overpayment could be used for future rent. I also find that as per the agreement between the parties the tenants were to pay a reduced rent of \$750.00 per month. Therefore the tenants applied the over payment of \$1,500.00 to January and Februarys rent.

Consequently, I find that at the time the 10 Day Notice was served upon the tenants on February 12, 2016 stating that \$1,500.00 was owed for January, 2016, there was no rent outstanding. The 10 Day Notice is therefore cancelled.

With regard to the tenants' claim for a Monetary Order for money owed to them by the landlord. It is clear from the evidence before me that the parties agreed that the tenants would do repairs and improvements to the property and the landlord would reimburse the tenants for the cost of materials and their labour. The total amount spent by the tenants including their labour costs was \$15,366.60. The landlord also agreed that the tenants could pay a reduced rent of \$750.00 per month until the landlord's debt to the tenants was paid. This continued for some months and then the landlord requested full rent for five of the months in 2015 which the tenants also paid. Consequently, I am satisfied from the evidence before me that the landlord's debt was reduced by \$9,000.00 to \$6,366.60 by the end of December, 2015.

The landlord argued that the tenants did the construction work without permits, yet as the owner of the property the responsibility to obtain the permits lies with the landlord and not the tenants; furthermore I find the landlord has presented insufficient evidence

to show that the city was going to make the landlord tear down the structure or that the new owners have encountered problems from the city regarding this work. As I have determined that the tenants were entitled to reduce their rent to zero for January and February, 2016 then I find the total amount now owed to the tenants by the landlord is **\$3,366.60**. I therefore allow the tenants' claim to recover this amount from the landlord and have issued a Monetary Order to the tenants pursuant to s. 67 of the *Act*.

As the tenants claim has merit I find the tenants are also entitled to recover their filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*.

Conclusion

The tenants' application is allowed. The 10 Day Notice to End Tenancy for unpaid rent dated February 12, 2016 is cancelled.

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,466.60**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

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: April 07, 2016

Residential Tenancy Branch

