Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, RP, DRI, CNC, ERP, RR, MND, MNSD, OPC, OPR, FF

Introduction

This was a cross-application hearing.

On February 22, 2016 the tenants applied to cancel a rent increase, to cancel a one month Notice ending tenancy for cause, compensation in the sum of $3,000.00 for damage or loss under the Act, an Order the landlord make emergency repairs and repairs, that the tenants be allowed to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee cost from the landlord.

On March 7, 2016 the landlord applied requesting compensation in the sum of $6,700.00 for damage to the rental unit, unpaid rent, an Order of possession based on a one month Notice ending tenancy for cause and a 10 day Notice ending tenancy for unpaid rent, to retain the security deposit and to recover the filing fee costs from the tenants.

Two of the tenants, A.B. and R. J. applied naming the landlord as a respondent. The landlord named all three co-tenants as respondents.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. 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. The hearing process was explained and the parties were given an opportunity to ask questions about the process. I have considered all of the included evidence and testimony provided.

The landlord stated that tenant A.B. was personally served with notice of the hearing on March 98, 20165, at the rental unit, with the other tenants present. R.J. confirmed that A.B. was served. Therefore, I find that A.B. has been served with Notice of the landlords'' hearing.

Preliminary Matters

At the start of the hearing the parties were informed that some matters on the applications might be insufficiently related to be heard as one application. That would be determined once the matters in dispute were more clearly established during the hearing.

The landlord has made application requesting compensation for damage to the rental unit. The tenancy has yet to end. I explained that the application was premature as the tenants have yet to have the opportunity to clean and make any repairs.

I noted the landlord made an application for fence repair. The fence shown in in evidence was clearly aged. I explained that a fence is a chattel and as such is the responsibility of a landlord to repair. The landlord also included items such as gutters and interior damage.

The landlord had a claim for unpaid rent in the sum of $300.00 at the time the application was made and that all rent with the exception of April 2016 had now been paid.

Therefore I determined that the monetary claim made by the landlord would be dismissed with leave to reapply. There was no claim made for unpaid April 2016 rent and the balance of the claim was premature.

The landlord submitted some evidence that was marked as confidential and was not given to the tenant R.J. or B.A. As this evidence was not served to the tenants it was set aside. The concept of fairness requires that all parties be served with evidence the other wishes to rely upon. The landlord was at liberty to make oral submissions.

Mutually Settled Agreement - End of Tenancy

During the hearing the parties agreed that the tenancy will end effective April 30, 2016 at 5:00 p.m.

The tenants agreed that the tenant is entitled to an Order of possession effective April 30, 2016 at 5:00 p.m.

Section 63(2) of the Act provides:

> ***Opportunity to settle dispute***
>
> ***63*** *(1) The director may assist the parties, or offer the parties an opportunity, to settle their dispute.*
>
> *(2) If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.*

In support of the mutually settlement agreement, I find, pursuant to section 55(3) of the Act, that the tenancy will end effective April 30, 3016 at 5:00 p.m. Co-tenants are jointly and severally liable. Two of the three co-tenants have agreed to end the tenancy that has the same effect as all tenants agreeing to end the tenancy.

Issue(s) to be Decided

Are the tenants entitled to compensation for a rent increase given that does not comply with the legislation?

Are the tenants entitled to compensation in the sum of $3,000.00 for damage or loss under the Act?

Must the landlord be Ordered to make emergency repairs?

Must the landlord be Ordered to return the security deposit to the tenants?

Background and Evidence

The tenancy commenced in the fall of 2012. Neither party has a copy of the signed tenancy agreement. Rent was $1,500.00 per month, due on the first day of each month. There was no move-in condition inspection report.

In January 2016 the landlord raised the rent by $100.00. The tenants have claimed compensation for a $300.00 rent overpayment from January to March 2016. The parties confirmed during the hearing that the rent overpayment has been dealt with and that the tenants have underpaid rent in order to correct the increase given that failed to comply with the Act.

The landlord confirmed that he did not give three months' Notice of a rent increase, in the approved form and in the allowable amount. The landlord said that the only money owed at present is April 2016 rent.

The tenants are claiming compensation in the sum of a $500.00 rent reduction for each month from October 2015, to March 2016, as the result of the failure of the landlord to make repairs.

R.J. stated that on October 2, 2015 the landlord trimmed some trees in the yard which caused damage. As a result the deck was ruined and the septic lid was damaged. The police were called and the work was stopped. R.J. said this resulted in a loss of use of the yard and the deck. Photos supplied by the tenants showed the deck railing hanging off the deck and a collapsed fence that appeared to be well-beyond its' useful life.

On February 20, 2016 the local government property use and compliance and corporation building inspector viewed the property and issued a February 26, 2016 letter to the landlord setting out twenty deficiencies that were to be addressed no later than March 31, 2016. Repairs included fencing, decks, a septic tank lid, issues with grade, gutters not cleaned and connected, kitchen sink and bathroom taps needing replacement, replace dishwasher and fridge, mold, carbon monoxide alarms were required by the gas range and gas fireplace; the gas fireplace must be repaired, and smoke alarms must be checked. The letter issued to the landlord found that the deficiencies existed under the Standards of Maintenance Bylaw and Property Enhancement Bylaw.

The landlord said he is negotiating with the local government and that the fines mentioned in the letter by the bylaw inspector have not been levied. The landlord said he would like to complete repairs but the tenant can be aggressive.

The tenant said there was no running water in the bathroom for a five month period, commencing late October 2015. The landlord came and took pictures and one month ago the water was repaired. There was no hot water in the bathroom.

The landlord stated that on February 6, 2016 he issued a 10 day Notice to end tenancy for unpaid rent. Rent was paid within five days. On February 13, 2016 the landlord issued a one month Notice to end tenancy for cause. On March 2, 2016 another 10 day Notice to end tenancy for unpaid rent was issued. The tenants have now agreed to vacate and there was no dispute that only April 2016 rent is owed. The landlord said that no issues were raised regarding repairs until after the Notices ending tenancy were issued. The landlord said the tenants' just had to contact him if repairs were required.

The landlord confirmed that until recently receipts for cash rent payments had not been issued.

The landlord said that he did start to cut trees on the property in October and that work was stopped. Tenant B.V. assisted the landlord with that work. The landlord said the fence was already in rough shape and that the tenant damaged the fence while trimming trees. The landlord said that the tenants have debris in the yard, but there is nothing of concern. The landlord supplied photocopied photographs; none of which were legible.

The items raised by tenant R.J. were not brought to the landlords' attention and when he was told about the water issue he had a plumber make the repair.

Tenant R.V. said that the deck is safe and that he repaired the railing some time ago. R.V. is a carpenter.

When questioned, the landlord confirmed that carbon monoxide alarms have not been installed and the smoke alarms had not been checked. During the hearing I explained that I would be ordering the landlord to address the carbon monoxide alarms, smoke alarms and septic tank cover. The parties reached agreement that those items would be addressed immediately after the hearing. R.J. gave the landlord permission to enter the rental unit. The landlord agreed to immediately place a suitable cover over the septic tank access. Currently the top is cracked and in three to four feet below grade. The tenant is concerned something could fall into the hole.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act and proof that the party took all reasonable measures to mitigate their loss.

I find that the issue of rent overpayment has been addressed. The landlord must issue a proper Notice of Rent Increase, in the approved form for a sum not exceeding the allowable annual increase, which in 2016 is 2.9%. The tenants have been reimbursed by adjusting the rent paid. Therefore, I find that rent is currently $1,500.00 month.

In relation to the monetary claim of $500.00 per month from October 2015 to March 2016; I find that the tenants have failed to prove they did anything to mitigate this loss claimed. I have considered section 7 of the Act, which provides:

Section 7 of the Act provides:

Liability for not complying with this Act or a tenancy agreement

7 *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the

> *regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

Residential Tenancy Branch policy suggests this means that the tenants, as the applicants, must take reasonable steps to keep the loss as low as reasonably possible. Mitigation requires the tenants to bring forward evidence that the tenants took steps to notify the landlord of the need for repairs, commencing in October 2015. B.J. said the landlord was notified of a water problem but provided no information on any contact made with the landlord. In the absence of any evidence that the tenants brought repair issues to the landlord's attention in October 2015 and evidence of any on-going efforts to have repairs completed I find that the tenants have failed to mitigate the claim made and that the monetary claim is dismissed.

From the evidence before me I find there are multiple deficiencies with the rental unit that would require orders for repair if the tenancy were to continue. I have chosen to issue orders related to matters of safety that are urgent in nature, in accordance with section 33 of the Act.

Therefore, pursuant to section 32 of the Act I Order the landlord immediately:

- Install carbon monoxide detectors as set out in the Property Use and Compliance Division letter dated February 26, 2016;
- Ensure that smoke alarms are installed and operational; and
- To install a secure, solid cover over the septic tank, at ground level.

As the tenants' application has some merit I find that the tenants are entitled to recover the $100.00 from the landlord. Based on these determinations I grant the tenants a monetary Order in the sum of $100.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenants are entitled to deduct $100.00 from the April 2016 rent owed, if that rent has yet to be paid. The monetary Order would then not be enforceable.

The tenant's claim for return of the security deposit is premature as the tenancy has yet to end. The security deposit will be disbursed in accordance with the legislation.

Conclusion

The tenancy is ending by mutual agreement.

The landlords' application is dismissed with leave to reapply.

The rent increase given in breach of the legislation has been rectified and the tenant has been reimbursed.

The tenants' claim for compensation is dismissed.

The landlord has been ordered to immediately install carbon monoxide alarms and to ensure smoke alarms are installed and functioning and to cover the septic tank opening.

The security deposit will be disbursed in accordance with the legislation.

The tenants are entitled to recover the filing fee cost.

This decision is final and binding 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: April 05, 2016

Residential Tenancy Branch