



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for cause; for a monetary order for damage to the unit, site or property; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The landlord was also given the opportunity to call one witness who gave affirmed testimony, despite an objection by the tenant that he had no notice of such witness. The tenant was also permitted to call one witness without notice to the landlord, however the tenant's witness became unavailable during the hearing. The parties were given the opportunity to question each other and the witness respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 1 Month Notice to End Tenancy for Cause was served in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?

Background and Evidence

The landlord testified that this tenancy began with a different tenant who passed away about a year ago, and the tenant named in this dispute had moved in with the original tenant without the landlord's knowledge. The named tenant continues to reside in the rental unit on a month-to-month basis. Rent in the amount of \$595.00 per month is payable on the 1st day of each month, and on May 20, 2014 the landlord collected a

security deposit from the original tenant in the amount of \$297.50, which is still held in trust by the landlord. The rental unit is a bachelor suite in a side-by-side 4-plex, all of which are currently tenanted.

The landlord further testified that on February 26, 2016 he served the tenant with a 1 Month Notice to End Tenancy for Cause. He stated that the notice was posted to the door of the rental unit that date, and the tenant confirmed with the landlord later that day that he had received it and said he was “waiting for the hammer to come down.” A copy of the first page of the 2-page notice has been provided and it is dated February 26, 2016 and contains an effective date of vacancy of April 1, 2016. The landlord testified that he faxed the application for dispute resolution and other materials to the Residential Tenancy Branch, and the notice was 2-sided and must have missed side 2 of the 1 Month Notice to End Tenancy for Cause. The landlord testified that the reasons set out on page 2 for issuing the notice are:

- Tenant or a person permitted on the property by the tenant has:
 - put the landlord’s property at significant risk;
- Tenant has engaged in illegal activity that has or is likely to
 - damage the landlord’s property;
 - adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord;
- Tenant has caused extraordinary damage;
- Tenant has not done required repairs.

In December, 2015 the RCMP came by and arrested the tenant for selling crack cocaine and heroin. It was in the newspaper, television news and local website. Another tenant also told the landlord about it. Subsequently, the landlord spoke to the tenant. Then in late December or January, 2016 another tenant told the landlord that police had been there again and kicked the door in. Two tenants have moved out for fear of constant traffic for short visits. The tenant continues to do the illegal activity because he’s not gone to Court yet. A window has been smashed out and the door has been kicked in. A quote for replacing the window has been provided at \$959.37.

The landlord also testified that the tenant is currently in arrears of rent \$200.00 for April, 2016 and \$595.00 for May, 2016. June’s rent has not yet been paid and it’s due today. The landlord has not issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities because he had already issued the 1 Month Notice to End Tenancy for Cause in February, 2016.

The landlord’s witness testified that he was present sometime in February, 2016 when the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause. The landlord knocked on the door but no one answered, so the landlord pasted it to the

door. The landlord had asked the witness to go with him and showed the document to the witness.

The witness also testified that sometime in May he witnessed the landlord hand a package to the tenant. The landlord told the witness what was in the package but the witness never looked at it.

The tenant testified that he moved into the rental unit, taking care of the original tenant who passed away on May 27, 2015. On June 1, 2015 the landlord agreed that the tenant could stay.

The tenant also denies that rent is behind as much as the landlord claims. The landlord was paid twice for June, 2015. The tenant paid rent for that month and then found out that welfare had already paid it for the original tenant. The cheque had already been sent out to the landlord when she passed away, and Social Assistance is asking the tenant to pay it back, but he never received it.

The tenant agrees that the police were there and damaged the door. The tenant attended Court for his first appearance but Crown Counsel didn't approve the charges. The Crown also didn't approve charges for the second arrest, and all charges have been dealt with. Unfortunately, that part isn't in the news.

With respect to the broken window, the tenant testified that someone tried to steal the tenant's scooter, the tenant chased them, and someone threw a rock through the window. The tenant has not repaired it but put plywood over it.

The tenant also denies that the landlord served the tenant in February with a 1 Month Notice to End Tenancy for Cause. The tenant received both pages of the 2-page form with the landlord's evidence and the application for dispute resolution and notice of this hearing. The documents were sent to the tenant by regular mail, and the tenant received them on May 4, 2016.

The tenant testified that the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in February, 2016 by posting it to the door of the rental unit, but the tenant paid the rent so that was dealt with.

Analysis

Where a landlord seeks an Order of Possession, the Residential Tenancy Rules of Procedure require a landlord to provide both pages of the notice to end the tenancy as evidence for the hearing. In this case, the landlord didn't do that. I accept that it was an

inadvertent omission, however it is difficult for an Arbitrator to determine the merits of a dispute when the full document is not provided. The Rule that applies states:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:

- ☐ a detailed calculation of any monetary claim being made;
- ☐ a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- ☐ copies of all other documentary and digital evidence to be relied on at the hearing.

When submitting applications online, the applicant must submit the required documents to the Residential Tenancy Branch directly or through a Service BC office within three business days of submitting the online Application for Dispute Resolution.

The only exception are for urgent applications or when the matter is subject to a time constraint, such as an application under *Residential Tenancy Act* section 38, 54 or 56 or an application under the *Manufactured Home Park Tenancy Act* section 47 or 49.

For these applications, the applicant must submit all evidence with the Application for Dispute resolution or within three business days of submitting an online Application for Dispute Resolution.

The *Residential Tenancy Act* requires a tenant to dispute a 1 Month Notice to End Tenancy for Cause within 10 days of service or deemed service. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy. I find it difficult to determine that the conclusive presumption exists where there is conflicting evidence of when the 10 days starts. The landlord testified that the notice was taped to the tenant's door on February 26, 2016 and the witness testified he observed the landlord paste it to the tenant's door sometime in February. The tenant testified that the landlord attached a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit in February. Someone is confused. The Landlord Application for Dispute Resolution was filed with the Residential Tenancy Branch on April 29, 2016.

In the circumstances, I am not satisfied that the landlord has established which notice was served on the tenant or that the notice served was in the approved form, and the landlord's application for an Order of Possession is dismissed.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

In this case, the landlord seeks compensation from the tenant to repair the broken window. The tenant does not dispute that the window is broken, and therefore I find that the landlord has established element 1.

The landlord's application seeks \$2,000.00 and has provided a Monetary Order Worksheet, but again page 2 has not been provided. The quote provided by the landlord is in the amount of \$959.37 including PST and GST, and therefore I find that the landlord has provided some evidence for element 3.

The *Act* also sets out obligations of a landlord and a tenant with respect to damages during a tenancy:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

(Underlining Added) In this case, the tenant testified that someone tried to steal his scooter, the tenant chased the person, and a rock was thrown through the window. I don't see that as a person permitted on the property by the tenant or damage caused by the actions or neglect of the tenant, however the only evidence of that is the tenant's testimony. The fact remains that the police attended at the rental unit twice, the door was kicked in, and Crown decided not to approve charges. The tenant has not been convicted of an offence.

A tenant is also required to leave a rental unit reasonably clean and undamaged at the end of a tenancy. Since the tenancy is not ending, I find it somewhat premature to be making a claim for damages and I dismiss the landlord's application for a monetary order for damage to the unit, site or property with leave to reapply.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

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: June 06, 2016

Residential Tenancy Branch