Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenants on July 19, 2016 to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "Notice"), and a notice to end tenancy for cause. The Tenants also applied to recover the filing fee from the Landlord.

An agent for the Landlord (the "Landlord") and one of the Tenants appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenants' Application and their documentary evidence. The Tenant confirmed receipt of the Landlord's documentary evidence served prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the issues to be decided. At the start of the hearing, the parties confirmed that the Tenant had not been served with a notice to end tenancy for cause and this was a clerical mistake by the Tenants. Therefore the request to cancel a notice to end tenancy for cause was dismissed.

Issue(s) to be Decided

- Have the Tenants established that the Notice ought to be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background &Evidence

The parties agreed that this tenancy started on October 1, 2014 for a fixed term of 12 months after which it continued on a month to month basis. Rent under the written tenancy agreement is payable by the Tenants on the first day of each month in the

amount of $2,800.00. However, the Landlord testified that through a legal notice of rent increase the Tenants' rent amount had been increased to $2,880.00 effective June 1, 2016.

The Landlord testified that at the end of April 2016, there was a flood in the upstairs unit above the rental unit and water then flooded into the rental unit. As a result, the Landlord contacted a contractor who dealt with the remediation work straightaway thereafter.

The Landlord testified that he was then contacted by the Tenant in writing in May 2016 demanding compensation for the flooding event. The Landlord testified that the Tenants then sent him another letter detailing a calculation they had performed based on their own opinions and decided on a number that the Landlord should compensate the Tenants for. The letter which is dated May 26, 2016 states that the amount of $6,020.00 will be deducted from future rents.

The Landlord testified that they wrote back to the Tenants the next day and explained that they disagreed with the amount of compensation that they were requesting explaining that it was excessive. The Landlord testified that in that letter it was explained to the Tenants that an alternative amount should be agreed and that if this was not possible then the matter should go through dispute resolution for determination.

The Landlord testified that despite his written letter to the Tenant explaining that they did not agree to the amount to be deducted from rent, the Tenant continued to withhold rent for June and July 2016 and made a reduced payment of $1,620.00 for August rent. The Landlord testified that the Tenants then continued to pay the reduced rent of $2,600.00 for September 2016 pursuant to a previous decision made by me on January 28, 2016, the file number for which appears on the front page of this decision.

The Tenant testified that the April 2016 flooding event was extensive and serious in nature and provided photographic evidence in respect to this. The Tenant explained that their request for compensation from the Landlord was valid and warranted as they did not have access to the rental unit for the period the repairs were being undertaken and included time and loss of peaceful and quiet enjoyment of the property.

The parties confirmed that pursuant to my previous decision dated January 28, 2016, the Tenants had already made deductions to the rent for February, March and April 2016 by which time they had realised all of the compensation that they had been allowed to make. The parties also confirmed that the Tenants had then continued to deduct $200.00 from their rent thereafter, also pursuant to my decision.

The Tenant testified that she paid $150.00 towards July 2016 rent, which was disputed by the Landlord. However, the Tenant confirmed that the deductions she made to the June, July and August 2016 rent was due to the April 2016 flooding event. The Tenant acknowledged that she did not have an order from the Residential Tenancy Branch or through my decision made on January 28, 2016 to make these deductions. When the Tenant was asked why she had not gone through the dispute resolution process to obtain such an order as she had been previously successful in doing so, the Tenant explained that she found the process frustrating and long and that she had a disability which hindered her ability to go through the dispute resolution process.

The Landlord explained that when the Tenants started to withhold rent for June 2016 he served with Tenant with a Notice in June 2016 and applied to end the tenancy through the Direct Request process. However, due to a clerical error he was unsuccessful in that application. As a result, the Landlord served the Tenants with another Notice on July 14, 2016 by mail. The Notice was provided into evidence and shows a vacancy date of July 27, 2016. The Tenant confirmed receipt of the Notice by mail sometime after July 14, 2016 and made the Application to dispute the Notice on July 19, 2016.

Analysis

Firstly, I find the Tenant was served with the Notice of which the form and contents complied with Section 52 of the Act. Secondly, I find that the Landlord served the Notice to the Tenants by mail pursuant to Section 88(c) of the Act. Thirdly, I find the Tenants applied to dispute the Notice within the five day time limit provided by Section 46(4) (b) of the Act.

Section 26 of the Act requires a tenant to pay rent **whether or not** the landlord complies with the Act unless the tenant has a right to deduct or withhold rent under the Act. One of the ways that a tenant may deduct or withhold rent is through the order of an Arbitrator. In this case, I find that the Tenants had already realised their compensation payable to them as ordered in my January 28, 2016 decision and therefore, starting on May 2016, the Tenants were only allowed to deduct $200.00 from their rent payments until the Landlord had completed required repairs to the rental unit.

However, I find the Tenants went beyond my order and deducted rent for the months of June, July and August 2016 in relation to a request for compensation based on a separate flooding event which had occurred in April 2016. This is contrary to the Act. I am confused as to why the Tenants started up the process to request from the Landlord compensation and then failed to purse that request through dispute resolution when the Landlord was not willing to provide the proposed amount, especially when the Tenant

had already been successful through the process on January 28, 2016 albeit that it was a long and frustrating.

I find the Tenants have failed to disclose authority under the Act to make deductions to their June, July and August 2016 rent payments and are now in breach of the Act. Therefore, I am unable to grant the Tenants' request to cancel the Notice and hereby dismiss their Application.

Section 55(1) of the Act states that if a tenant makes an Application to dispute a Notice the Arbitrator **must** grant an Order of Possession if the Notice complies with the Act and the tenant's Application is dismissed. Therefore, as I have dismissed the Tenants' Application I must grant the Landlord an Order of Possession to end the tenancy.

As the vacancy date of the Notice has now passed and the Tenants are in rental arrears, the Landlord is entitled to a two day order of Possession. If the Tenants fail to vacate the rental unit, the order may be enforced in the Supreme Court of British Columbia as an order of that court. Copies of the order are attached to the Landlord's copy of this decision for service on the Tenants.

Conclusion

The Tenants have breached the Act by not paying rent. Therefore, the Tenant's Application is dismissed without leave to re-apply. The Landlord is granted an Order of Possession which is effective two days after service on the Tenants.

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: September 08, 2016

Residential Tenancy Branch