



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on August 2, 2016 for the following reasons;

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “10 Day Notice”);
- for a Monetary Order for the cost of emergency repairs;
- for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and,
- to recover the Application filing fee from the Landlords.

The Landlords, the Landlords’ legal counsel, and the Tenant appeared for the hearing. However, during the hearing only the Tenant provided affirmed testimony and legal counsel made submissions. 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 evidence relating to only the issues to be decided in this hearing.

Preliminary Issues

Legal counsel confirmed that the Landlords had received the Tenant’s Application and confirmed that they had not received any evidence from the Tenant prior to this hearing. The Tenant confirmed that he had not provided any evidence prior to the hearing. The Tenant confirmed receipt of the Landlords’ binder of documentary evidence but stated that he had received this on August 14, 2016 which was a short period of time prior to this hearing to consider this amount of evidence and to prepare for his monetary claim.

The Landlords’ legal counsel stated that most of the evidence in the binder related to another file number for a hearing that is to take place between the same parties in

October 2016 and that the binder was served pursuant to this hearing and to the October 2016 hearing. The Tenant confirmed that he had been served the binder of evidence for both hearings and that the Tenant's lawyer was currently in the process of examining the evidence for a response for the October 2016 hearing.

In this respect, I determined that the Landlords had served the Tenant with their evidence prior to the hearing within the seven day time limit provided for by the Residential Tenancy Branch Rules of Procedure. Therefore, I informed the Tenant that the Landlords were able to use this evidence in this hearing. However, I informed the Tenant that if there was a document or piece of evidence that was significant in nature to the issue to be determined in this hearing, I would deal with that matter at that time.

Rule 2.3 of the Rules of Procedure sets out that in the course of a dispute resolution proceeding, Arbitrators may use their discretion to dismiss unrelated claims contained in a single Application with or without leave to re-apply. Therefore, based on the foregoing, I determined that I would only deal with the Tenant's Application to cancel the notice to end tenancy in this hearing. I accept that the date of this scheduled hearing did not allow the Tenant sufficient time to prepare for his monetary claim and therefore, I dismiss this with leave to re-apply.

Issue(s) to be Decided

- Has the Tenant 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 December 15, 2016 and a written tenancy agreement was signed. Legal counsel stated that rent in the amount of \$2,000.00 was payable by the Tenant and that while the written tenancy agreement stated that this was to be paid on the 15th day of each month, the understanding between the parties was that it was to be paid on the 1st day of each month. The Tenant stated that pursuant to his tenancy agreement the rent was payable on the 15th day of each month but acknowledged that he made rent payments during this tenancy on the first day of each month.

Legal counsel stated that the Tenant failed to pay rent on July 1, 2016. As a result, on July 26, 2016 the Landlords served the Tenant with a 10 Day Notice. The 10 Day Notice was provided into evidence and shows a vacancy date of August 5, 2016 due to \$2,000.00 in unpaid rent due on July 1, 2016. Legal counsel stated that the Tenant paid

only \$1,200.00 for August and September 2016 rent and is currently \$3,600.00 in rental arrears. The 10 Day Notice was posted to the Tenant's door.

The Tenant confirmed receipt of the Notice on his door on July 27, 2016. The Tenant testified that he had withheld rent for July 2016 because the Landlord had failed to complete repairs to a bridge which provided access to the rental property. The Tenant testified that the bridge had collapsed and the Landlord had failed to repair it. As a result, he and his pregnant wife had to trespass on the neighbour's property to access the rental unit. The Tenant testified that the Landlord had failed to provide him with a pool and hot tub in working order and was not providing proper water to the rental unit.

The Tenant stated that he withheld rent for July 2016 as a means to get the Landlord to complete these repairs to the rental unit and to provide agreed services as promised by the Landlords. The Tenant acknowledged that after speaking with his lawyer he realised that this was not the proper legal way to go about getting the Landlord to do these repairs. However, the Tenant testified that the Landlord had agreed to him doing repairs to the property but confirmed that he had not provided the Landlord with all receipts for the agreed work or as evidence for this hearing.

The Tenant explained that he paid reduced rent of \$1,200.00 for August and September 2016 because the rental unit was initially advertised for rent at \$1,200.00. However, the Tenant agreed with the Landlords that he would pay \$2,000.00 on the basis that the Landlords would provide him access to a workshop with power on the rental property. The Tenant testified that the Landlords failed to provide power to the rental unit and after several failed negotiations and talks the parties were unable to reach agreement; therefore, the Tenant started to pay the reduced rent to reflect the loss and value of the power to the workshop which caused him to have to move his business.

The Tenant explained that he had discovered that the repair to the driveway which the Landlords had failed to complete was going to cost him approximately \$1,500.00. Therefore, he withheld rent for July 2016 to account for this potential repair that he may need to undertake in the near future.

Legal counsel disputed the Tenant's testimony. Legal counsel submitted that the Landlords had not agreed or allowed the tenant to unilaterally reduce the rent to \$1,200.00 and that the Tenant often failed to pay rent during the tenancy when he did not get his way after he bullied the Landlords. Legal counsel submitted that the Landlords had authorised some repairs but had asked the Tenant to provide receipts for this, which he did not do. Legal counsel submitted that the Tenant had only provided

one receipt for a bridge part but the Landlords have given no authority to the Tenant to make deductions from rent.

Legal counsel submitted that the pool and hot tub did not form part of the tenancy agreement and the Tenant was not promised power to the workshop. Legal counsel stated that the Landlords had mortgage payments to make and that this was proving difficult as the Tenant is now in rental arrears. The Tenant responded stating that he was willing to pay all of the rental arrears but the issue of the Landlord doing repairs and providing services under this tenancy still needed to be resolved.

At the end of the hearing, I offered the parties an opportunity to settle the matter by way of mutual agreement. However, due to the complex monetary claims associated with this tenancy and after a brief discussion which I allowed the parties to have, an agreement was not able to be brokered.

Analysis

In relation to the 10 Day Notice, I find that the form and contents complied with Section 52 of the Act. In relation to the timing of the 10 Day Notice, while the deeming provisions of Section 90 of the Act allow three days for a document posted to the door to be deemed as received, I accept the Tenant's oral evidence that he actually received the Notice on July 27, 2016 from his rental unit door.

The parties disagreed on the date that rent was payable under this agreement. However, while I make no legal findings on this matter, I find that as the Landlords served the 10 Day Notice on July 25, 2016, which was after both the first and the 15th of the month, the 10 Day Notice is still valid.

Taking into consideration that the *Interpretation Act* allows for time limits to be extended to the next day when it falls on a holiday, I find the Tenant applied to dispute the 10 Day Notice within the five day time limit set by Section 47(4) of the Act. Section 26 of the Act requires a tenant to pay rent under a tenancy agreement **whether or not** the landlord complies with the Act unless the tenant has a right to deduct or withhold rent. In this case, I find the Tenant has failed to satisfy me that he complied with Section 26 of the Act in paying his rent.

The Tenant focused his attention on detailing the breaches of the Act by the Landlord, namely the Landlords failure to: complete repairs; maintain the rental property; and to provide services alleged to have been agreed. While I make no legal findings on the validity of these allegations, I find the Tenant has disclosed no breach of the Act that

would have allowed the Tenant to not pay rent for this tenancy. The Act does not allow a Tenant to withhold rent as a means to get a Landlord to comply with the Act such as making repairs to the rental property.

In addition, I find the Tenant has not satisfied me that he made repairs to the rental unit and that he then provided the Landlords with all the relevant receipt for re-imbursement. In this case, I find that the Tenant withheld his rent for July 2016 to force the Landlords to comply with the Act. In this respect, the Tenant pursued an incorrect course of action.

I also find that the Tenant had no authority under the Act to unilaterally reduce his rent to \$1,200.00 for August and September 2016. The Tenant would have only been able to do this if he had written authority from the Landlords or an order from an Arbitrator after making an Application and proving his claims. None of this evidence was before me. Therefore, I find the Tenant has not satisfied me that the 10 Day Notice should be cancelled and the Tenant's Application in this respect is dismissed.

Section 55(1) of the Act states that if a tenant makes an Application to dispute a notice to end tenancy the Arbitrator **must** grant an Order of Possession if it complies with the Act and the tenant's Application is dismissed. As the effective date of the 10 Day Notice has now passed and the Tenant is in rental arrears, the Landlord is entitled to a two day order of Possession. If the Tenant fails 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 Landlords' copy of this Decision for service on the Tenant.

Conclusion

The Tenant's Application to cancel the 10 day Notice and recover the filing fee is dismissed without leave to re-apply. The Landlord is granted an Order of Possession which is effective two days after service on the Tenant. The Tenant's monetary claim is dismissed with leave to re-apply as this was not heard during these proceedings.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 23, 2016

Residential Tenancy Branch

