



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated October 1, 2016
- b. An order to recover the cost of emergency repairs
- c. A monetary order in the sum of \$1875.
- d. An order that the landlord comply with the Act, regulation or tenancy agreement.
- e. An order suspending or setting conditions on the landlord's right to enter the rental unit.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on October 1, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on October 7, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated October 1, 2016?
- b. Whether the Tenants are entitled to an order to recover the cost of emergency repairs?
- c. Whether the tenants are entitled to a monetary order?

- d. Whether the tenants are entitled to an order that the landlord comply with the Act, regulations or tenancy agreement.
- e. An order suspending or setting conditions on the landlord's right to enter the rental unit.

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on March 15, 2016 and end on March 15, 2016. The rent is \$880 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$440 and a pet damage deposit of \$200 at the start of the tenancy.

In June 2016 the landlord went on a 3 week holiday overseas. During that time there was a plumbing problem. The tenant testified she was unable to get ahold of the landlord or anyone acting on behalf of the landlord. As a result they hired a plumber who fixed the problem. The plumber charged \$1870. The tenant testified she gave a copy of this invoice to the landlord in early July. The landlord denies being given a copy. The landlord disputes the amount charged. The tenant testified she mailed a copy of this invoice to the Residential Tenancy Branch in early November. The Branch has not received that evidence. The landlord testified the tenant did not give her a copy of that evidence. The tenant testified she did not think she had to because she previously provided it to the landlord.

The landlord testified the tenants have failed to pay the rent for August, September, October and November and the sum of \$3520 is outstanding. The tenants testified they have paid all of the rent with the exception of the rent for November. They further testified that the landlords refuse to accept a cheque and refuse to provide a receipt where a cash payment is made.

Analysis:

Section 26(1) and (2) of the Residential Tenancy Act provides as follows:

Division 4 — During a Tenancy

Rules about payment and non-payment of rent

26(2) A landlord must provide a tenant with a receipt for rent paid in cash.

The landlord has the burden of proof to establish the Tenants have failed to pay the rent. The landlords are operating a business. The landlord failed to provide copies of receipts or written accounting of rental payments. The Act provides that if the rent is paid by cash the landlord must provide a receipt for rent paid in cash. The landlord refused to provide receipts. The Notice to End Tenancy dated October 1, 2016 alleges the rent for August and September has not been paid. The tenants testified they paid the rent for this period. It is unclear whether they are applying the alleged emergency repair claim of \$1870 to the rent. Given the failure of the landlord to provide receipts or an accounting, I determined the landlord has failed to prove rent is owed for August and September for the purpose of determining whether the 10 day Notice to End Tenancy is sufficient..

As a result I ordered that the Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. The tenants admitted they have not paid the rent for November. The landlords have the right to serve a new Notice to End Tenancy on the Tenants. The landlords also have the right to file an Application for Dispute Resolution seeking to recover all outstanding rent.

Tenants' Application to recover the cost of emergency repairs and a Monetary Order
Rule 2.5 and 3.14 of the Rules of Procedure provide as follows:

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.

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

Section 33 of the Residential Tenancy Act provides as follows:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I dismissed the tenants' application for a monetary order in the sum of \$1875 including the cost of emergency repairs for the following reasons:

- The Rules of Procedure provide that a party must provide evidence to the other party at least 14 days prior to the hearing. The tenants testified they were unaware of this requirement and they did not provide the invoice from the plumber to the landlord as required.
- The tenants failed to ensure the evidence was received by the Branch prior to the hearing. They failed to provide a sufficient explanation why this evidence was not included in the original application.
- I have set out section 33 of the Act. The landlord disputes the amount claimed for the work. It is unclear whether it amounts to an emergency repair. However, the Act requires that the Tenants provide the landlord with a receipt for each amount claimed. The tenants failed to provide the receipt and the claim must be dismissed.
- The tenant testified the landlord cut off cable and they seek a monetary order in the sum of \$260 to recover a deposit paid to Telus, a hook-up fee and the cost of cable. The Tenants failed to provide the evidence to support this claim.

The landlord alleged in materials filed that they had a monetary claim for outstanding rent. However, the landlord have not filed an Application for Dispute Resolution. This has been a frustrating hearing as both parties failed to provide sufficient evidence to establish their claim on the merits. I determined it was appropriate to grant both parties the right to re-apply.

Application to Suspend or set conditions on the Landlord's right to enter:

I dismissed the Tenants applicant to suspend or set conditions on the landlords' right to enter the rental unit as the tenants failed to present sufficient evidence to justify such an order.

Conclusion::

I granted an order cancelling the 10 day Notice to End Tenancy as the landlord failed to present sufficient evidence to establish rent was owing for August and September. I dismissed the tenant's application for a monetary order with liberty to re-apply. The landlord retains the right to file a claim for a monetary order for all of the outstanding rent.

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: November 28, 2016

Residential Tenancy Branch