Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

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 October 7, 2016 to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice").

The male Landlord, an agent for the Landlord (who was also the Landlords' son), and the Tenant appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Application by registered mail. However, the Landlord denied receipt of the Tenant's documentary evidence. The Tenant stated that he had not served the Landlords a copy of his documentary evidence because he was not aware he had to do this.

The Residential Tenancy Branch Rules of Procedure provides that a party wanting to rely on documentary evidence must also serve it to the other party prior to the hearing. This information is also clearly outlined in the Notice of Hearing documents which were provided to the Tenant after he made the Application. Therefore, as the Landlord had not been served with the Tenant's evidence I declined to consider it in my findings; however, the Tenant was not prevented from providing documentary evidence as oral testimony.

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.

Issue(s) to be Decided

- Has the Tenant established that the 10 Day Notice ought to be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background &Evidence

The parties agreed that this tenancy started in February 2013 on a month to month basis. Rent under the written tenancy agreement is payable by the Tenant on the first day of each month in the amount of $860.00 which was increased to $990.00 on August 1, 2016.

The Landlord testified that by October 4, 2016, the Tenant was in rental arrears of $110.00 for September 2016 rent and only paid partial rent for October 2016 in the amount of $495.00. This left an outstanding amount of $605.00 in rental arrears. As a result, the Landlord served the Tenant with the 10 Day Notice on October 4, 2016 by registered mail. The 10 Day Notice was provided into evidence and shows a vacancy date of October 20, 2016 for an amount of $605.00 that was payable on October 1, 2016. The Landlord testified that of the $605.00 in rental arrears, the Tenant paid $500.00 after the Tenant received the 10 Day Notice on October 4, 2016. Therefore, this left an outstanding balance of $105.00 which was not paid within the five day time period provided to the Tenant.

The Landlord's agent testified that the Tenant paid full rent late for the months of November and December 2016 but the outstanding balance of rent payable was only reduced by $5.00 to $100.00 which was still outstanding at the time of this hearing. The Landlord's agent testified that they continually asked the Tenant for this payment and the Tenant kept informing them that this was for an alleged toilet repair.

The Tenant confirmed receipt of the 10 Day Notice on October 4, 2016 and did not dispute the Landlord's agent's testimony with respect to the rent payments detailed above. The Tenant was asked why he had not paid the outstanding balance of $100.00 in rent for this tenancy and in any case why he did not make the payment within the five days that he had under the 10 Day Notice. The Tenant responded stating that in October 2016 the toilet in the rental unit broke and started to leak. As a result, the Tenant started to repair the toilet. The Tenant testified that he called the Landlord twice to let him know of the leak and that he was repairing the toilet.

The Tenant confirmed that while he had receipts for the costs he incurred to replace the leaking toilet he had not presented these to the Landlords for re-imbursement or provided them into evidence for this hearing. The Tenant stated that he wanted to go halves with the Landlords for the costs he incurred but that he was now willing to give the Landlords the $100.00 rent he owed them on the Friday following this hearing or to return the leaky toilet back to the rental unit for the Landlord to repair it.

The Landlord's agent testified that the Tenant did call the female Landlord about a leaky toilet but did not request verbally or in writing for the repair to be completed by the Landlords. The Landlord's agent submitted that the Tenant had not provided any receipts to the Landlords for the work he had done. The Landlord's agent testified that the toilet was brand new at the start of the tenancy and the Landlords were not given any opportunity to examine what the problem was or exactly what repair the Tenant has done. The Landlord's agent stated that the toilet was a specialised toilet which was likely replaced by the Tenant with a cheap comparable one. The Landlord's agent submitted that the Tenant's repair claim was bogus and that the Landlords were not willing to re-instate this tenancy on the promise the Tenant would pay the outstanding rental arrears.

Analysis

Firstly, I find the Tenant was served with the 10 Day 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 pursuant to Section 88(c) of the Act on October 4, 2016 which the Tenant confirmed that he had received the same day. Thirdly, I find the Tenant applied to dispute the 10 Day 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. Section 46(4) (a) of the Act states that a tenant may pay the rent within five days of receiving a 10 Day Notice in which case the 10 Day Notice has no effect.

Section 33 of the Act provides that a tenant may deduct the cost of emergency repairs from rent. This section of the Act is very specific in that it requires a tenant to pursue a course of action that, if followed correctly, allows the tenant to eventually make deductions from rent as follows: 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. The tenant may claim these amounts back from the landlord by providing the landlord with a written account of the emergency repairs and a receipt for each amount claimed. If the landlord fails to reimburse the tenant, the tenant may then deduct this amount from rent or otherwise recover that amount.

Based on the foregoing provisions of the Act and the evidence before me, I find the Tenant has failed to provide sufficient evidence of the actual repair he is alleged to have completed of the toilet replacement. I am not satisfied that the Landlord was given an opportunity to investigate and conduct the repair which the Landlord would have been obligated to do. I am also not satisfied that the Landlord was provided with the receipts for the alleged repairs undertaken and given an opportunity to consent to deductions from rent or make reimbursement to the Tenant.

In the absence of this evidence before me, I am only able to conclude that the Tenant did not have authority under the Act to make a deduction from his rent. The evidence before me is that the Tenant did not pay the outstanding rental arrears of $110.00 within the five day time limit after he was served the 10 Day Notice and the Tenant is now in rental arrears of $100.00. Therefore, I am unable to grant the Tenant's request to cancel the 10 Day Notice.

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 the notice complies with the Act and a tenant's Application to cancel it is dismissed. Therefore, as I have dismissed the Tenant's Application I must grant the Landlord an Order of Possession. The Order of Possession is effective for the end of December 2016 at 1:00 p.m. The order must be served to the Tenant and may then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit. Copies of the order are attached to the Landlords' copy of this Decision.

Conclusion

The Tenant has 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 to end the tenancy. 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: December 05, 2016

Residential Tenancy Branch