Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC MNR FF

Introduction

This in-person hearing in the Burnaby Office of the Residential Tenancy Branch (the RTB) dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord gave undisputed sworn testimony that he posted the 1 Month Notice on the tenant's door on January 6, 2017. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the 1 Month Notice on January 9, 2017, the third day after its posting.

The tenant testified that he sent the landlord a copy of his dispute resolution hearing package by registered mail on January 24, 2017. As the landlord confirmed receipt of this package and in accordance with sections 89 and 90 of the *Act*, I find that he was deemed served with this package on January 29, 2017, the fifth day after its registered mailing.

The tenant said that he posted a copy of his written evidence and an amendment to his original application in which he increased the amount of monetary award sought on the landlord's door. He was unclear as to when this occurred. The landlord confirmed that he had received and reviewed the tenant's written evidence, but was somewhat unclear as to the nature of the tenant's amended application. Under these circumstances and in accordance with the powers delegated to me, I have accepted that the tenant's written

evidence was sufficiently served for the purposes of the *Act.* I have considered these documents in reaching my decision.

As the tenant confirmed receipt of the landlord's written evidence, I find that the landlord's written evidence was duly served in accordance with section 88 of the *Act*.

During the hearing, the landlord's brother provided interpretation services for the landlord. As the landlord's brother also wanted to speak on the landlord's behalf, the landlord's brother was sworn in as the landlord's advocate so that he could provide this evidence on the landlord's behalf.

Preliminary Matters

The tenant identified no specific figures to properly alert the landlord of his apparent intention to seek an increased monetary award in his amended application. Although the tenant's amended application stated that he was attempting to obtain a rent reduction for the three months where incidents were identified in his original application, he did not clarify the additional amount requested. The confusing information on the amendment form denies the landlord the opportunity to properly know the case against him with respect to the tenant's request for an additional monetary award. Posting this information on the landlord's door is not a permissible way to seek an increased monetary award as is required by section 89(1) of the *Act*.

I find that the tenant has not adequately served the landlord with notice of his amended application for a monetary award for rent reduction. I dismiss this part of the tenant's application with leave to reapply.

At one point in the hearing, the tenant noted that the landlord's 1 Month Notice had incorrectly identified this tenancy as being pursuant to the *Manufactured Home Park Tenancy Act* instead of the *Residential Tenancy Act*. He questioned whether this error on the landlord's part invalidated the 1 Month Notice.

On this point, I advised the parties that the *Act* allows me to make relatively minor corrections to documents that have no real bearing on a party's ability to know the case against him or her and that do not have a meaningful impact on the nature of the application. In this case, the tenant confirmed that he was fully aware that the landlord's 1 Month Notice applied to the rental unit where he has been residing since November 2014, and that this is and always has been a rental for a suite in the landlord's home that would fall within the jurisdiction of the *Residential Tenancy Act*. I also note that the tenant applied for cancellation of the 1 Month Notice pursuant to the *Residential Tenancy Act*. For these reasons and in accordance with section 62 of the *Act,* I find that

the parties realized fully that the landlord's 1 Month Notice was submitted in accordance with the *Residential Tenancy Act* and not the *Manufactured Home Park Tenancy Act*. The minor error in the landlord's 1 Month Notice has no effect on the tenant's application to cancel this Notice or the landlord's ability to obtain an Order of Possession in the event that the tenant's application is dismissed.

Issues(s) to be Decided

Is the tenant entitled to obtain an extension of time to apply to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice)? Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy for a basement rental unit began on or about November 18, 2014 as a month-to-month tenancy. The landlord lives upstairs. Although the tenant said that the landlord prepared a written tenancy agreement and the tenant signed a copy of that agreement, the tenant testified that the landlord never provided him with a copy of that agreement signed by both parties. The landlord said that there was no written tenancy agreement.

Monthly rent was set at $580.00, payable in advance on the 28th of each month. The landlord continues to hold the tenant's $290.00 security deposit paid on or about November 18, 2014, when this tenancy began.

The landlord's 1 Month Notice identified January 28, 2017, as the effective date. As this date was incorrect and in accordance with section 53 of the *Act*, I advised the parties that the effective date of this 1 Month Notice automatically corrected to February 28, 2017, the first possible date that a 1 Month Notice served on January 6, 2017 could take effect.

The landlord's 1 Month Notice identified the following reasons for ending this tenancy:

> *Tenant is repeatedly late paying rent.*
>
> *Tenant has engaged in illegal activity that has, or is likely to:*
> - *damage the landlord's property;*
>
> *Tenant has caused extraordinary damage to the unit/site or property/park.*

The landlord maintained that the tenant had been repeatedly late in paying his rent and that the tenant had failed to pay one-half of the utility bills for this property, as he had committed to do when this tenancy began.

The tenant applied to cancel the 1 Month Notice on January 24, 2017, well after January 19, 2017, the last date when he could legally dispute that Notice. The tenant provided sworn testimony and written evidence in support of his request for an extension of time to apply to cancel the 1 Month Notice. He said that he suffered an accident in early January 2017, and could not apply to cancel the 1 Month Notice until he recovered from this injury. He supplied the following note to support this request:

> *The reason I did not come to the Landlord-Tenant Office early due to my injury that caused me home bound. The work absence certificate from Dr. T to proof that I should not work and stay home from January 3, 2017 to January 20, 2017.*
>
> (as in original)

The tenant entered into written evidence a copy of his doctor's note of January 10, 2017. This "Work Absence Certificate" read as follows:

> *This letter is to certify that (XXX – the tenant) was assessed in this office and was/is unable to work due to injury.*
> *From: January 3, 2017*
> *To: January 20, 2017*

At the hearing, the tenant gave sworn testimony that the only times that he left the house during this period was to take the bus to Downtown Vancouver to be treated by his physiotherapist.

The tenant's original application for a monetary award of $1,000.00 identified the following losses that he incurred as a result of the landlord's actions and refusal to repair items:

Plumbing	$350.00
Door Repair	$150.00
Door Replacement	$550.00

In a written attachment to his original application for a monetary award, the tenant provided the following explanations for each of the above items:

In August 2016, the faucet of bath tub broken. Landlord refused to fix it. It cost me $350 to fix it. I was without shower for one week during the hottest week in 2016.

In Dec. 10, 2016. Landlord used axe to break my apartment front door. The cost to repair the door is $150. Police was called.

In January 1, 2016 (really 2017). Landlord broke my apartment front door again. Police was called. The cost to replace the door and door frame is $500.

Most of the tenant's written evidence was directed at the landlord's claim that he was frequently late in paying his monthly rent. There was conflicting evidence as to whether the tenant had agreed to pay one-half of the utility costs for this property.

With his original application, the tenant attached a handwritten $350.00 receipt from a plumber for work on a shower. He claimed that the landlord refused to repair his broken shower and told him that the tenant would have to fix this himself.

He also attached a copy of a December 11, 2016 receipt for $150.00 from a locksmith company for replacing the doorknob and lock set for damage caused by the landlord. He also provided a February 6, 2017 estimate from a door replacement company totalling $595.00 plus tax.

The landlord confirmed that he did break the lock mechanism on the tenant's door with a mallet at approximately 2 am on the night of December 10, 2016. He said that he smelled smoke and had tried repeatedly to awaken the tenant, but could not do so. As the tenant had changed the lock, he said that he had to break the door to ensure the safety of his home. He did not dispute the tenant's claim that the landlord told the police that he used an axe to break the tenant's door. He said that it was not actually an axe, but a mallet that he used as an axe.

The landlord did not dispute the tenant's claim that the landlord improperly broke the door on January 1, 2017. The landlord said that he kicked the door open on that occasion. He recognized that the tenant's claim for the replacement of this door was valid.

Analysis – Tenant's Application for an Extension of Time to Dispute the 1 Month Notice

Section 66(1) of the *Act* establishes that an arbitrator "may extend a time limit established by this Act only in exceptional circumstances."

The tenant submitted a doctor's note to support his claim that he was unable to work during the period from January 3, 2017 until January 20, 2017. However, the tenant stated that he was able to take a bus to Downtown Vancouver to attend physiotherapy sessions, at some distance from his rental unit, during this period. I note that the rental unit is close to the Burnaby Office of the Residential Tenancy Branch (RTB), much closer than the tenant's physiotherapist's office. When questioned about this, the tenant said that he had not initially read the time frames in the 1 Month Notice very closely and believed that he had more time to file an application to the RTB. He said that he believed that he had a month to respond to the 1 Month Notice. At this point, he also questioned the information on the 1 Month Notice, as the landlord had mistakenly placed a check mark in the box stating that this was an application under the *Manufactured Home Park Tenancy Act* and not the *Residential Tenancy Act*.

Based on the evidence before me, I do not view the tenant's circumstances as constituting "exceptional circumstances" that presented him from filing an application to cancel the 1 Month Notice within the time frame established under the *Act*. The tenant lives close to the RTB's Office in Burnaby and was able to take the bus to a far more distant location during the 10-day period for filing an application for dispute resolution. I also note that there is an online process for filing an application for dispute resolution, which the tenant could also have utilized had he truly been unable to leave his rental unit during that period. For these reasons, I deny the tenant's application for an extension of time to dispute the landlord's 1 Month Notice.

The 1 Month Notice clearly outlines that a tenant seeking to dispute the landlord's 1 Month Notice must do so within 10 days of being served with that Notice. In this case, the tenant had until January 19, 2017 to either dispute the 1 Month Notice or be conclusively presumed to have accepted that the tenancy was to end on the corrected effective date of that Notice.

Section 47 of the Act reads in part as follows:

> *(3) A notice under this section must comply with section 52* [form and content of notice to end tenancy].
>
> *(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date…

I find that the tenant's failure to file an application to dispute the 1 Month Notice within ten days after being deemed to have received that Notice led to the conclusive presumption that he had accepted that the tenancy ends on the corrected effective date of that notice, February 28, 2017. Since I am satisfied that the landlord's 1 Month Notice met the requirements as to the form and content outlined in section 52 of the *Act*, I find that the tenant must vacate the rental unit by 1:00 p.m. on February 28, 2017.

Analysis – Tenant's Application for a Monetary Award

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord is responsible for the losses identified in the tenant's claim.

Section 33 of the *Act* establishes the mechanism whereby a tenant may claim for emergency repairs that were necessary and which the landlord was unwilling to undertake. However, as outlined below, there is an extensive process that a tenant must demonstrate he or she has undergone before a tenant is eligible for reimbursement for the recovery of emergency repairs undertaken by the tenant.

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….

(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…

(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.

I have carefully considered the tenant's application for a monetary award for losses arising out of the repair to the plumbing in the rental unit in August 2016. I find the tenant's evidence of loss somewhat lacking. The tenant produced no copies of emails, texts or letters exchanged with the landlord requesting the repair of the shower in August 2016, many months before the tenant sought reimbursement through this application. He provided little detail as to the steps he went through to try to have the landlord repair his shower. I also find that the receipt that he submitted is somewhat

vague and provides no indication as to whether the problem with the shower was one for which the tenant or the landlord were responsible. For these reasons, I find that the tenant has not established to the extent required that his claim for reimbursement for the plumbing repair costs should be allowed. I dismiss this part of the tenant's claim without leave to reapply.

By contrast with the plumbing issue, I am satisfied that the tenant had reasonable grounds to want to repair the door damaged by the landlord on two separate occasions within a month. The landlord's explanation did not seem to hold the ring of truth regarding these incidents, and the landlord admitted that he should be held responsible for the tenant's repair costs for the second of these incidents. Under these circumstances, I find that the tenant was fully justified in taking immediate measures to repair his door such that the landlord would be prevented from gaining access to his rental unit. I allow the tenant's claim for the repairs of the door on both of these occasions. Although the tenant submitted an estimate of $550.00 for the replacement of his door damaged on January 1, 2017, he gave undisputed sworn testimony that he actually paid only $500.00 to another company to purchase and install the door. He said that he secured the estimate entered into written evidence after the initial company refused to issue him a receipt for the work it had undertaken. As there is no question that the tenant did replace the door damaged by the landlord and the landlord did not challenge the tenant's evidence in this regard, I issue a monetary award of $500.00 for the January 2017 replacement of the tenant's door, the expense the tenant claims to have incurred. I issue a monetary award of $150.00 for the replacement of the door know and lock set damaged by the landlord in December 2016. This leads to a total monetary award of $650.00 in door repairs stemming from these two incidents.

As the tenant's application for a monetary award has been successful, I find that he is entitled to recover his $100.00 filing fee from the landlord.

Conclusion

I dismiss the tenant's applications for more time to file an application to cancel the landlord's 1 Month Notice and the tenant's application to cancel the 1 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on February 28, 2017. Should the tenant or any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the tenant's favour under the following terms, which enables the tenant to recover the costs of his emergency repairs and his filing fee:

Item	Amount
Repair of Door and Lock December 2016	$150.00
Replacement of Door January 2017	500.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	**$750.00**

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The items included in the tenant's amended application for a reduction in rent during this tenancy are 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: February 27, 2017

Residential Tenancy Branch