Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, MNR, MNDC, OLC, ERP, RP, PSF, LRE, AS, RR, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution originally seeking a monetary order and various orders against the landlord for repairs; emergency repairs; regarding access to the rental unit; allowing assignment or subletting; and a rent reduction. The tenant later submitted a revised application that included seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

The parties have been involved in 4 previous dispute resolution proceedings since May 11, 2016 as noted on the cover page of this decision. The outcomes of those decisions are listed below:

- Decision dated May 11, 2016 - the tenant's claims for emergency repairs; repairs; the cost of emergency repairs, and a rent reduction were dismissed. The arbitrator did issue an order that the landlord is responsible for the maintenance of the property and the provision of adequate notice of entry to the rental unit;
- Decision dated October 7, 2016 – cancelled a 10 Day Notice to End Tenancy for Unpaid Rent. In addition, the arbitrator found that rent for the unit was $500.00 per month. She also found that in regard to the tenant's claims that the landlord owed her money for work he had done as a caretaker for the property that any employment contract between the two parties was outside of the jurisdiction of the *Residential Tenancy Act (Act)* and that they were required to find other avenues to settle that dispute. Finally, the arbitrator found that the landlord's expectation that the tenant be responsible for hydro costs was not enforceable.
- Decision dated February 15, 2017 – includes a reiteration of the arbitrator's orders made in an Interim Decision dated December 8, 2016 on this file for the landlord to complete some specific repairs; a monetary award totaling $1,350.25 for emergency repairs made after May 11, 2016; the return of a portion of the security deposit paid by the tenant; and an order reducing rent to $250.00 effective November 2016 until the landlord complied with the orders to make

specified repairs. The decision allows the tenant to recover the monetary award by applying it to rent payable; and

- Decision dated February 22, 2017 – cancelled a 10 Day Notice to End Tenancy for Unpaid Rent.

While I am not bound by previous unrelated decisions made by other arbitrators when decisions have ordered specific remedies in regard to the same tenancy, I am bound by those findings and orders. By way of example, from the decision of February 15, 2017, I am bound by the arbitrator's orders that rent, effective November 2016 is to be in the amount of $250.00 until such time as the landlord obtains an order from an arbitrator that the repairs ordered are completed.

At the outset of the hearing I sought clarification of the details of the tenant's monetary claim in the amount of $25,000.00. The tenant stated that he was seeking additional funds over and above what was ordered by the decision of February 15, 2017 for repairs he made to the rental unit and for harassment and loss of quiet enjoyment.

I noted that the tenant had not provided any breakdown of his claim sufficient to allow the landlord to be able to respond to his claim. The tenant submitted that he had planned to submit an additional "brief" outlining what his claim was about but due to medical issues he was unable to have it submitted to the hearing.

In support of this position the tenant submitted a letter from his physician dated March 1, 2017 stating: "Due to recent injuries, [the tenant] cannot tolerate sitting more than 30 minutes at present. He will require another month to recover." The tenant submits because of this medical condition he could not submit his brief.

However, the tenant did not explain why he did not submit his "brief" outlining his claim when he submitted his Application for Dispute Resolution to the landlord. The whole reason a party must explain their claim when they provide their Application to the other party is so that the respondent may be able to respond to the claim. When the applicant does not provide an explanation as to what they are claiming or why the respondent is prejudiced in their ability to be prepared for a hearing.

The tenant requested an adjournment so that he could prepare his "brief".

Residential Tenancy Branch Rule of Procedure 7.9 states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party.

Residential Tenancy Branch Rule of Procedure 3.1 requires the applicant to serve the respondent with their evidence within three days, if available, of their Application being accepted. For any evidence not available at the time the applicant filed their Application it must be served on the respondent as soon as possible or at least no later than 14 days prior to the hearing.

Rule of Procedure 3.11 states that evidence must be served and submitted as soon as reasonably possible. If an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

Upon consideration of the tenant's oral submissions, I find the tenant has provided no explanation as to why his own written submission was not provided when he filed his Application. In addition, while I accept the tenant submitted that he is recovering from an injury and his physician's letter states he cannot sit for more than 30 minutes, it does not explain why he could not write and/or submit or have an agent submit his "brief".

Furthermore, since the tenant has brought 4 previous Applications against the landlord in the last year that are all primarily related to the same issues I find the tenant should have been fully prepared to submit this latest Application complete with the reasons behind his claim. As a result, I find it would be contrary to the interests of procedural fairness to allow an adjournment so that he can now submit the reasons for his claims once the proceeding has begun.

For these reasons, I dismiss the tenant's request for an adjournment. I did offer that if the tenant was not prepared to proceed with his monetary claim that he could withdraw all claims unrelated to the Notice to End Tenancy and remain at liberty to resubmit his other claims under a future Application. The tenant withdrew those portions of his claim.

As a result, I confirmed with both parties that I would only consider testimony in regard to the tenant's Application seeking more time to submit his Application to cancel a notice to end tenancy and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent.

I also note that during the hearing both parties exhibited unruly behaviour and both needed to be cautioned several times on how to conduct themselves during the hearing.

Specifically, the landlord's agent repeatedly scoffed and laughed at the tenant's testimony. The agent also repeatedly attempted to interrupt the tenant's testimony and continuously attempted to submit testimony that was not relevant to the non-payment of rent. The landlord also expressed his contempt for the process and the adjudication of the previous decisions. Mid-way through the hearing the landlord asked for the hearing to end so that he could go to work.

I repeatedly warned the landlord that should he continue his behaviour I would end his participation in the hearing. I also advised the agent that if he wanted to leave he was free to do so but that the hearing would continue and a decision would be made in his absence.

As to the tenant, he repeatedly interrupted me throughout the proceeding. When I was asking him questions to seek clarity on his testimony and evidence the tenant's responses were often evasive or non-responsive. As such I would have to repeat the questions several times. In some cases, I had to direct the tenant to respond with either yes or no to the question asked.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

And finally, I note that the tenant requested that I determine that if there is outstanding rent that I determine the amount. However, I advised both parties that my role in regard to this Application dealing solely with whether or not the landlord had the right to end the tenancy for unpaid rent is to determine if **any** amount of rent was owed and not the quantum.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to cancel a notice to end tenancy and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 46 and 66 of the *Act.*

Should the tenant be unsuccessful in seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by both parties for a month to month tenancy beginning on June 1, 2013 for a monthly rent of $700.00 due on the 1st of each month with a security deposit of $500.00 paid. The parties had previously agreed to some rent reductions during the tenancy.

As noted above in the decision of October 7, 2016 an arbitrator found that rent was $500.00 per month. In addition, an arbitrator found, in the decision of February 15, 2017, that the tenant had overpaid the security deposit by $150.00 and that rent be reduced to $250.00 per month effective November 2016 until the landlord had complied with previous orders.

The landlord submitted that the tenant has stopped paying rent altogether and the tenant also failed to pay rent for specific months dating back to 2013, 2014, 2015, and 2016. As a result, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on February 24, 2017 with an effective date of March 6, 2017 citing the tenant had failed to pay rent in the amount of $16,150.00.

The tenant acknowledged receipt of the 10 Day Notice on February 24, 2017 and submitted that he contacted Service BC who had to determine if he should submit a new Application or submit an amendment to his original Application for Dispute Resolution. He stated that as a result, he was not informed until March 3, 2017 to submit an amendment to his Application, which was already after the deadline.

I reviewed audit notes on the applicant's file and found no notations regarding discussions or email communication with the tenant regarding such inquiries. However, I note it is standard practice for the Residential Tenancy Branch to conduct such discussions in similar cases.

The tenant confirmed that he has not paid the landlord any cash payments for rent since June 2015. He states that he did not pay the rent because he had to complete emergency repairs when a water pipe burst in the rental unit and he could not reach the landlord. The tenant provided an explanation of some of the invoices paid out for these emergency repairs and submitted that he has not been compensated for those costs or for his labour and time to complete the emergency repairs.

The tenant asserts that he has also withheld rent payments for other work he has completed for the landlord. He has submitted that the landlord had agreed to have him complete a substantial amount of work to the rental unit and residential property for which he has not been compensated.

The tenant referred to a handwritten document, dated March 18, 2016, he provided in evidence that he attributes to the landlord that says she will credit him with $3,354.57 towards rent. He also refers to another letter from the landlord dated April 18, 2016 outlining an agreement that he did not have to pay rent.

However, the tenant stated that the landlord's recording of the agreement was not the agreement they had reached verbally prior to the end of March 2016. In the landlord's letter it states that she agrees she will suspend the tenant's obligations to pay rent for the months of April, May, June and July 2016 for work that will be completed on another rental unit in the property and to rent it out to a new tenant. The letter clearly states that "it has nothing to do, what you owed me the time before" [reproduced as written].

In response the tenant wrote to the landlord on May 8, 2016 in which he states that the agreement they made was different than what the landlord had suggested in her April 18, 2016 letter. The tenant wrote what the additional compensation he was seeking entailed. The tenant closed his letter by stating "I await an email from you so we can finalize agreement once fixed I'm happy to pay $500.00 rent and do the maintenance work." [reproduced as written] The tenant confirmed he never received a response changing any of the agreement.

The tenant testified during the hearing that his understanding of the agreement was that he would be allowed to renovate the rental unit and he would not have to pay rent until he was fully compensated for all of the work completed.

Analysis

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

While I have no definitive proof from the tenant to confirm his submissions that he had been in discussion with either Service BC or the Residential Tenancy Branch to determine how best to dispute the 10 Day Notice I accept that this is a usual practice of the Branch and I find it is plausible to have occurred in this manner.

As such, and in recognition of the Branch's obligation to ensure administrative fairness I find that if the delay was related to actions taken by the Branch, the tenant is entitled to additional time to submit his amendment to his original Application. I grant the tenant the additional time he took to submit his amendment to include seeking to cancel the 10 Day Notice.

Section 46 of the *Act* states a landlord may end a tenancy if any amount of rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice. As noted above, I have granted the tenant an extension of this 5 day time limit.

While I concur with my colleague in the decision dated October 7, 2016 that the landlord has the burden to provide sufficient evidence to establish that rent is owed to them from the tenant, when the tenant admits that he has not paid the landlord any amount of money for rent since June 2015, I am satisfied the tenant has established that rent has not been paid. However, in this case, the tenant submits that he had valid reasons to not pay the rent for the period beginning on July 1, 2015.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has the right under this *Act* to deduct all or a portion of the rent.

Some allowable reasons that a tenant could withhold rent include an agreement between the parties that rent might be waived; an order from an arbitrator; to recover the costs of emergency repairs; or an overpayment of a security deposit.

Section 33(1) of the *Act* defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- Major leaks in pipes or the roof,
- Damaged or blocked water or sewer pipes or plumbing fixtures,
- The primary heating system,
- Damaged or defective locks that give access to a rental unit, or
- The electrical systems.

Section 33(3) states a tenant may have emergency repairs made only when all of the following conditions are met:

- Emergency repairs are needed;
- 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; and
- Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Section 33(4) states a landlord may take over completion of an emergency repair at any time. Section 33(5) stipulates that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Section 33(7) allows that 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.

Section 19 of the *Act* stipulates a landlord must not require or accept a security deposit or a pet damage deposit that is greater than the equivalent of ½ of one month’s rent payable under the tenancy agreement. This section goes on to say that if a landlord accepts a security deposit or a pet damage deposit that is greater than the amount

permitted, the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Using the determination of the arbitrators in the decision dated October 7, 2016 that rent is $500.00 and the decision dated February 15, 2017 that rent, effective November 1, 2016, was $250.00, I find for the period from July 1, 2015 to February 1, 2017 the tenant should have paid a total of $9,500.00 in rent to the landlord (17 months at $500.00 per month and 4 months at $250.00 per month).

From the decision of February 15, 2017 the tenant is allowed to deduct $1,350.25 from this amount owed to the tenant for emergency repairs for the period between May 12, 2016 and October 12, 2016 and to recover an overpayment of a security deposit, leaving a balance of $8,149.75 owing. I note that the decision of May 11, 2016 dismissed the tenant's claim of $6,039.99 for repairs and emergency repairs made prior to May 11, 2016. As such, the tenant has failed to establish, in that hearing that he had made emergency repairs at all, let alone that he could deduct from rent payments and I am bound by the finding.

The October 7, 2016 decision determined that if the tenant did work for the landlord any monetary claim he might have against the landlord for his general work and maintenance of the property falls outside of the jurisdiction of the *Act.* The tenant has provided no evidence that he has pursued this claim through any other avenue and obtained a determination of any monies owed from the landlord.

Furthermore, even if the tenant is owed money due to his employment with the landlord Section 26 does not allow the tenant to withhold these monies from any rental payments. As such, any amount of compensation the tenant may be entitled to for work on the property that is not an emergency repair cannot be withheld from his rental payments.

As noted above, if the landlord has agreed the tenant is not responsible for rental payments then I can also apply those amounts to the allowable deductions from rent owed.

I find the tenant's submission of the landlord's agreement with the credit of $3,354.57 dated March 18, 2016 allows the tenant deduct this amount from rent owed leaving a balance of $4,795.18 rent owing to the landlord.

However, in regard to the tenant's submission that the landlord agreed to future exemptions from rental payments I accept the tenant's submission that he responded to

her letter outlining what she thought were the terms of their agreement made verbally in March 2016 stating that he was awaiting an email from the landlord to finalize the agreement.

The three tenets of a contract or agreement are consensus; consideration; and capacity. If the parties don't reach a consensus – that is an agreement on the terms, then a contract or agreement has not been reached. From the tenant's own testimony they did not reach an agreement on the payment or suspension of rental payments for any period beginning April 2016. As a result, I find the tenant cannot rely on the landlord's letter of April 18, 2016 to deduct rental payments.

However, I note that even if I were to accept the tenant had any agreement from the landlord to withhold any amount of rent it would have only been for the period outlined in the landlord's letter, as the tenant has not provided any evidence that the landlord agreed to anything else. In that case, the amount the landlord was willing to forgive was $2,000.00 still leaving a balance owing of $2,795.18.

The tenant has presented no other evidence to show that he had authourity under the *Act* to withhold any of the balance remaining outstanding rent. As a result, I find that on the date that the landlord issued the 10 Day Notice to End Tenancy (February 24, 2017), the tenant owed the landlord at least $2,795.18 in outstanding rent.

As a result, I dismiss the tenant's Application for Dispute Resolution seeking to cancel the 10 Day Notice to End Tenancy issued on February 24, 2017.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on February 24, 2017 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Conclusion

Based on the above, I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: March 30, 2017

Residential Tenancy Branch