



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, LAT, MNDC, MNR, RR

Introduction

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

- a. An order to cancel the one month Notice to End Tenancy dated March 7, 2017
- b. A monetary order in the sum of \$12,622.40
- c. An order to cancel a Notice to End Tenancy for unpaid rent.
- d. An order that the landlord pay the cost of emergency repairs.
- e. An order that the landlord provide services or facilities required by law.
- f. An order suspending or setting conditions on the landlord's right to enter the rental unit.
- g. An order authorizing the Tenant to change the locks.
- h. An order allowing the tenant a reduction of rent for repairs, services or facilities agreed upon but not provided.
- i. An order to recover the cost of the filing fee.

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. The parties confirmed they had exchanged documents that are relevant to the issues in dispute.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on March 8, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on March 2, 2017. 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 one month Notice to End Tenancy dated March 7, 2017?
- b. Whether the Tenant is entitled to a monetary order and if so how much?
- c. Whether the Tenant is entitled to an order to cancel a Notice to End Tenancy for unpaid rent.
- d. Whether the Tenant is entitled to an order that the landlord pay the cost of emergency repairs.
- e. Whether the Tenant is entitled to an order that the landlord provide services or facilities required by law.
- f. Whether the Tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit.
- g. Whether the Tenant an order authorizing the Tenant to change the locks.
- h. Whether the Tenant an order allowing the tenant a reduction of rent for repairs, services or facilities agreed upon but not provided.
- i. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

On January 31, 2011 the parties entered into a written month to month tenancy agreement that provided that the rent was \$650 per month payable in advance on the first day of each month. The written tenancy agreement provided that the tenant paid a security deposit of \$325 on January 31, 2011.

Grounds for Termination:

The one month Notice to End Tenancy identifies the following grounds:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord

The agent for landlord provided the following testimony:

- The landlord had allegedly served one month Notice to End Tenancy dated February 23, 2017. The tenant disputed service. The agent for the landlord stated she was abandoning this Notice and was relying on the one month Notice to End Tenancy dated March 7, 2017.
- The Tenant was late paying the rent on the following occasion:
 - The rent for October 2016 was paid on October 5, 2016.
 - The rent for November 2016 was paid on November 7, 2016
 - The rent for December 2016 was paid on December 6, 2016
 - The rent for January 2017 was paid on January 6, 2017.
 - The rent for February 2017 and March 2017 was paid on time.
- The landlord produced the following 10 day notices as evidence of the late payment:
 - 10 day Notice to End Tenancy dated October 5, 2016
 - 10 day Notice to End Tenancy dated November 11, 2016
 - 10 day Notice to End Tenancy dated December 2, 2016
 - 10 day Notice to End Tenancy dated January 6, 2017

The tenant disputes the landlord's claims and testified as follows:

- The tenancy agreement provided the rent could be paid between the 1st and the 5th day of each month.
- That when he paid the rent the payment date fell on a Sunday and the landlord was not prejudiced.
- The landlord accepted the pattern of late payment.
- The landlord is attempting to evict so it can charge higher rents.
- The rental unit was unfit for habitation. The tenant lives in a basement suite. There was a problem with the furnace which made living in the rental unit very difficult. On one day in October it was -5 degrees.
- The landlord failed to repair the furnace in a timely manner. The landlord does not have technical knowledge.
- He is certified engineer with 15 years of experience and in a home based business.
- The rental property does not meet electrical, mechanical and safety standards due to retrofits that were never applied for permits and causing electrical shortcuts, sewer gars, bug infiltration, and no heat.
- He provided emergency services. He testified he spent countless hours, around the clock mechanical maintenance in order to keep the HVAC system running for the entire house. He has dealt with countless noises and vibrations caused by obsolete systems. There is no thermostat to control the fresh air intake, exhaust, heating or cooling. There is not baseboard heater in the suite whatsoever.

- The tenant has e-mailed a letter to the City of Burnaby outlining the problems with the rental problem.
- He is also the principal of a company. He provided a bill from the company FHD Inc. dated January 20, 2016 (the date was in error and it should read January 20, 2017) charging the landlord \$11,200 (including \$1200 GST and PST). The bill states "Amount due on Receipt." It does not provide a description of the work or identify parts and materials). The tenant kept a copy of this bill which has the notation "over 30 interventions on existing HVAC, plumbing system, Misc. parts & materials not specified."
- The tenant has given this bill to a collection agency and the collection agency has demanded payment from the landlord.
- The tenant produced a second bill from FHD Inc. dated March 1, 2017 in the sum of \$425.60 and a third bill from FHD Inc. dated March 10, 2017 in the sum of \$571.20 (including \$61.20 in GST and PST).
- The landlord agreed to pay him these costs. He referred to an exchange of text messages. On January 9, 2017 he texted the landlord outlining a problem with sewer gas in the washroom. The landlord responded saying if it is clogged you will have to unclog it but if it is something else I will need to arrange someone to check on it.

Analysis - Application to Cancel the one month Notice to End Tenancy dated March 7, 2017::

Policy Guideline #36 provides as follows:

"The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.”

After carefully considering all of the evidence I determined the landlord has established sufficient cause to end the tenancy for the following reasons:

- There are four late payments. The tenant failed to pay the rent on time for the months of October 2016, November 2016, December 2016 and January 2017.
- Policy Guideline #38 provides that 3 late payments is the minimum number sufficient to justify a one month Notice based on repeated late payment.
- An arbitrator no longer has the jurisdiction to grant an extension of time to pay the rent.
- I do not accept the testimony of the Tenant that the tenancy agreement allowed him to pay the rent between the 1st and the 5th of each month. The written tenancy agreement clearly provides that payment must be made on the first of each month.
- I do not accept the submission of the Tenant when he says the landlord was accepting the late payments. The service of the four Notices to End Tenancy indicates the landlord is not accepting the late payments.
- I do accept the submission of the tenant that he was entitled to withhold payment because the rental unit was not habitable. Section 26(1) of the Act provides as follows:

Rules about payment and non-payment of rent

26 (1) 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 a right under this Act to deduct all or a portion of the rent.

- I do not accept the submission of the Tenant that the late payments were justified because of the work he did on the rental property amounted to an emergency repair. Section 33 of the Act provides as follows:

Section 33 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 determined the tenant failed to establish that he would be entitled to withhold rent or make a rent payment based on his attempts to maintain the rental property for the following reasons:

- The tenant failed to prove the work done amounts to an emergency repair as defined by the Act giving the right to withhold the rent..
- Even if it did amount to an emergency repair, the first account that was given to the landlord is dated January 20, 2017 which occurred after the 4 late payments.
- The tenant failed to prove he made any payments for emergency repairs.
- The tenant failed to comply with section 33(6) of the Act in that he failed to provide sufficient notice to the landlord, failed to provide a written account of the emergency repairs accompanied by a receipt for each amount claimed, and failed to establish the amounts represent a reasonable cost.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the one month Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice. .

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective April 30, 2017.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Application for a Monetary Order:

The tenant seeks a monetary order in the sum of \$12,622.40 for work allegedly done on the rental unit. The applicant has the burden of proof to present sufficient evidence to establish his claim on a balance of probabilities.

After carefully considering all of the evidence I determined the tenant failed to establish he is entitled to monetary compensation for the following reasons:

- The tenant is an individual. The accounts relied on by the Tenant are accounts of the corporation. He has given the one account in the name of the corporation to a collection agency. The corporation is not the tenant. Even if the accounts were valid and proper, an arbitrator does not have jurisdiction to consider this claim as it is not a residential tenancy matter. It is a claim brought by a corporation for non-payment of an account and the corporation would have to use Small Claims Courts to pursue this.

I further determined that even if I am wrong in my above analysis and the tenant and the corporation could be seen as one of the same, the tenant has failed to prove the claim for the following reasons:

- The landlord has not asked or agreed with the Tenant for the tenant and or his corporation to do the work. The Tenant failed to prove the landlord authorized the work.
- In the one case relied on by the tenant the text message states that if it wasn't a clog they would have to send someone else in to do the work bathroom back up. This is not evidence of a landlord authorizing the work.
- There is no evidence the Tenant and/ or FHD Inc. gave the landlord a quotation as one might expect.
- The accounts fail to provide a description of the work done or the materials installed or supplied.

- I determined the work does not amount to an emergency repair as defined by section 33 of the Act which would give the tenant the right to make a monetary claim for the reasons set out above.

As a result I ordered that the monetary claim filed by the Tenant be dismissed without liberty to re-apply.

Application of the Tenant to cancel a Notice to End Tenancy for unpaid rent:

I dismissed the Tenant's application to cancel a 10 day Notice to End Tenancy for unpaid rent as the rent has been paid and the landlord is not relying on those notices.

Application of the Tenant for an order that the landlord pay the cost of emergency repairs:

For the reasons set out above I dismissed the Tenant's application for an order that the landlord pay the cost of emergency repairs.

Application of the Tenant for an order he is entitled to an order that the landlord provide services or facilities required by law.

The tenant failed to present sufficient evidence to establish this claim and accordingly this claim is dismissed.

Application of the Tenant for an order suspending or setting conditions on the landlord's right to enter the rental unit and an order authorizing the Tenant to change the locks.

The tenant failed to present sufficient evidence to establish this claim and accordingly this claim is dismissed.

Application of the Tenant for an order allowing the tenant a reduction of rent for repairs, services or facilities agreed upon but not provided.

The tenant failed to present sufficient evidence to establish this claim and accordingly this claim is dismissed. The evidence presented by the Tenant was general in nature and failed to provide sufficient particulars to establish this claim.

Conclusion:

In summary I dismissed the tenant's application to cancel the one month Notice to End Tenancy. I granted an Order of Possession effective April 30, 2017. I dismissed the claim of the tenant for a monetary order and the claim for the cost of the filing fee without liberty to re-apply. All other claims are dismissed for the reasons set out above.

This decision is final and binding on the parties.

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