



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR ERP LAT LRE MNDC MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47; a monetary order for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; an order that the landlord to make repairs (or emergency repairs) to the rental unit pursuant to section 33; authorization to change the locks to the rental unit pursuant to section 70; an order to set conditions on the landlord's right to enter the unit pursuant to section 70; and authorization to recover the 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, and to make submissions. The landlord and her representative confirmed receipt of the tenant's Application for Dispute Resolution, the tenant's amendment submitted on March 24, 2017 and the tenant's additional evidence submitted on April 18, 2017.

Issue(s) to be Decided

Should the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") be cancelled or is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary order for compensation for loss under the Act?

Is the tenant entitled to an order that the landlord make (emergency) repairs?

Is the tenant entitled to an order allowing him to change the locks to the rental unit?

Is the tenant entitled to an order to set conditions on the landlord's right to enter the rental unit?

Background and Evidence

This tenancy began on October 1, 2016. The tenant testified that the tenancy was for a two year fixed term. The landlord testified that this was to be a short term tenancy agreement while the tenant found a more permanent residence. The landlord testified that there was no written residential tenancy agreement created for this tenancy. The parties agreed that the \$650.00 rental amount was payable on the first of each month. The landlord confirmed that she holds a \$650.00 security deposit that the tenant paid at the outset of this agreement.

The tenant testified that, in an attempt to get the attention of the landlord to address the deficiencies in the rental unit, he withheld rent for two months. The tenant testified that he did not pay any rent in March 2017 and in April 2017. On March 20, 2017, the landlord posted a 10 Day Notice for Unpaid Rent on the tenant's door. The tenant testified that he received the notice within a day of its posting. The tenant applied to cancel the 10 Day Notice.

The tenant provided undisputed evidence that he had no refrigerator in his rental unit from October 2016 (the start of the tenancy) until the date of this hearing. The tenant testified that, when he moved in, the condo/rental unit was brand new however some appliances were not connected or fully set up and there was no refrigerator in the rental unit. The tenant testified that he was told the refrigerator had been ordered and would arrive soon. The tenant testified that, within the last few weeks, a refrigerator was delivered to his rental unit but that it does not work. He testified that the dishwasher does not work properly either.

The tenant testified that, because he had no refrigerator in his rental unit, he could not cook fresh food. Therefore, the tenant ate out every day since he has moved in (a total of approximately 210 days).

The property manager testified that there have been delays in the work to the landlord's unit as a result of difficulties with the strata. The property manager testified that many of the landlord's problems with strata relate to the tenant's behaviour in the residential premises. The property manager indicated that the landlord has been served with several notices of the tenant's violation of strata by-laws and of the tenant causing damage to the property. She testified that a refrigerator was delivered to the rental unit very recently. In response to the tenant's testimony that the refrigerator did not work, she testified that the tenant merely had to install the filter in the refrigerator – at that point, he would be able to use the refrigerator.

The tenant testified that the landlord has entered his unit several times without his permission. The tenant did not provide documentary or other evidence to support the claim that the landlord enters his rental unit. The tenant testified that he has already changed the locks on the rental unit. The landlord testified that she does not have a key for the new locks and is concerned about not having access to the rental unit if there is an emergency.

The tenant testified that, as well as dysfunctional appliances and intrusions to his privacy by the landlord, the landlord has not replaced his key to the rental unit and the main front door to the property. He testified that he has to find other ways to come in, for example through the underground parking. The landlord testified that the tenant frequently loses his keys to the entrance and the mail box and insists that they be replaced the same day: the landlord submitted that it has been impossible to meet the tenant's repeated demands for replacement keys.

The property manager, as witness on behalf of the landlord testified that the tenant has destroyed the front door by forcing the front door open. The property manager provided photographic evidence to show the tenant has forced the door open on more than one occasion. The landlord submitted photographic evidence from the front and parking garage security cameras. These photographs were attached to letters from the strata notifying the landlord of violations by the tenant. The letters describe; the tenant forcing open the front door; the tenant vandalizing the front entranceway; the tenant taking an elevator notice board; the tenant and others loitering in the underground parking garage; a demand letter that the landlord pay the costs of repairs to the front door; a demand letter that the landlord end the tenancy.

The landlord testified that the tenant is extremely disruptive in the building and that he has now not paid rent for two months. The landlord testified that, previous to not paying his rent, the tenant paid only partial rent amounts for the months of December 2016 to February 2017. The tenant testified that he refuses to pay rent until all of these issues are resolved.

Analysis

When a tenant applies to cancel a notice to end tenancy, the burden of proof falls to the landlord to prove that there are sufficient grounds upon which to end the tenancy. In this case, the landlord relies on the ground of unpaid rent. The tenant does not dispute that he has failed to pay rent but testified that he refused to do so because of the condition of his rental unit and the lack of facilities provided by the landlord.

Section 26(1) of the Act establishes 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 a right under this Act to deduct all or a portion of the rent.” Based on all of the evidence before me, including the testimony of the tenant, I find that the tenant has not paid rent in accordance with the oral tenancy agreement between the landlord and tenant. I accept the testimony of the landlord that sometimes the tenant did not pay his full rental amount and, most recently, he has not paid rent for two months (March 2017 and April 2017). As the tenant has not paid rent for the months of March and April 2017, I find that the tenant’s application to cancel the notice to end tenancy must be dismissed. **I find that the landlord is entitled to an Order of Possession for the rental unit.**

With respect to the tenant’s claim for repairs, the tenant provided insufficient evidence of the nature of the repairs he sought: I am unclear on what repairs he wants the landlord to make. However, I find that his request for repairs is moot as he will be vacating the rental unit as soon as practicable and in accordance with an Order of Possession granted to the landlord.

I find that the tenant’s application to suspend or restrict the landlord’s access to the unit and to change the lock on the rental unit is also moot as the tenant will be vacating the rental unit. I will include an order that the tenant shall provide the keys for the current lock that he has put on the rental unit to the landlords upon vacating the rental unit.

When a tenancy agreement exists between the landlord and the tenant, both are bound to meet certain obligations. If a landlord fails to meet his obligations and a tenant is subsequently deprived use of a part of their premises, the tenant may be entitled to damages in the form of rent abatement or a monetary award. In consideration of the tenant’s monetary request for compensation for the lack of refrigerator for the majority of the tenancy, I refer to section 27 of the Act, barring a landlord from terminating or restricting a service or facility that “is essential to the tenant’s use of the rental unit as living accommodation...”

Residential Tenancy Policy Guideline No. 22 provides that,

Where the tenant claims that the landlord has restricted or terminated a service or facility without reducing the rent by an appropriate amount, the burden of proof is on the tenant.

There are six issues which must be addressed by the landlord and tenant.

- *whether it is a service or facility as set out in Section 1 of the Legislation;*
- *whether the service or facility has been terminated or restricted;*

- *whether the provision of the service or facility is a material term of the tenancy agreement;*
- *whether the service or facility is essential to the use of the rental unit as living accommodation ...;*
- *whether the landlord gave notice in the approved form; and*
- *whether the rent reduction reflects the reduction in the value of the tenancy.*

In section 1 of the Act (the definitions section), the definition of “services and facilities” includes but is not limited to appliances and furnishings. A refrigerator is a major appliance and a primary feature in most residential tenancy agreements. I find that a refrigerator is a material term of this verbal tenancy agreement. There is no evidence to show that the provision of a refrigerator was excluded from this agreement.

All of the evidence before me indicates that the tenant did not have a refrigerator in his rental unit until very recently. The property manager confirmed that the refrigerator was missing from the rental unit from the outset of the tenancy and for the majority of the tenancy. She testified, undisputed by any other party in attendance, that the refrigerator was only very recently put in the rental unit. I note that the filter was not put into the refrigerator. The property manager testified that it was a simple process and that this step was the responsibility of the tenant but I am unconvinced that this type of maintenance is the obligation of the tenant.

I find that, in all of the circumstances, the tenant was; not informed that he would be without a refrigerator for the amount of time that he has gone without this appliance; and not provided with any rent reduction related to the loss of use of this facility. All parties attending this hearing agree that the tenant did not have a refrigerator in his rental unit for a minimum of 5 months and a maximum of 7 months as of the date of this hearing. In this case, I find that the landlord has not made sufficient efforts to provide a refrigerator. The absence of a refrigerator in these circumstances warrants compensation to the tenant.

In this case, the tenant has proven that the landlord failed to honour the residential tenancy agreement and their obligations under the Act by failing to provide the tenant with a refrigerator. I accept the testimony of both parties and find that the tenant was without the use of a refrigerator for 6 months. I find that the tenant is entitled to be compensated both for the loss of use of this facility within his rental unit by a reduction of his rent and that he is entitled to a nominal amount towards his food costs over the course of 6 months.

I find that the tenant is entitled to a 20% reduction in his monthly rent equal to \$130.00 per month. Therefore, **the tenant is entitled to an amount totalling \$780.00** for 6 months without a functioning refrigerator. **I find that the tenant is also entitled to a nominal amount of \$250.00** towards the additional cost of eating in restaurants for 6 months instead of having the option to cook and eat at home.

Conclusion

I dismiss the tenant's application to cancel the notice to end tenancy.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 to the tenant in the amount of \$1030.00.

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

The tenant shall provide the keys for the current lock that he has put on the rental unit to the landlords upon vacating the rental unit.

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: May 5, 2017

Residential Tenancy Branch