

DECISION

Dispute Codes CNR, MNDC, RP, FF

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for Cause for unpaid rent, for compensation for loss or damage under the Act, regulations and tenancy agreement, for repairs to the rental unit and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on April 5, 2017. Based on the evidence of the Tenant and that the Landlord confirming receipt of the documents; I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?
2. Are the Tenants entitled to compensation for loss or damage?
3. Are there repairs to be completed?

Background and Evidence

This tenancy started on July 1, 2012 as a one year fixed term tenancy and then continued on as a month to month tenancy. Rent is \$1,894.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$837.50 on June 23, 2012 and a pet deposit of \$837.50 during the start of the tenancy. The pet deposit was partially paid in cash and partially paid in labour by cleaning the rental unit for the Landlord.

The Landlord said she served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated April 2, 2017. She served the Notice on April 2, 2017 by posting the Notice on the door of the Tenants' rental unit. The Effective Vacancy date on the Notice was April 12, 2017. The Tenants are living in the unit and the Landlord requested an Order of Possession if the Tenants’ application is unsuccessful.

The Landlord continued to say that the Tenants have unpaid rent of \$15,744.00 for the months from September, 2016 to April, 2017. As well, the Landlord said the Tenants have not paid the May, 2017 of \$1,894.00.

The Tenant said they do not agree there is unpaid rent of \$15,744.00 for the months of September, 2016 to April, 2017 as they have done work and repairs to the rental unit that has offset the rent payments. The Tenant said they have not paid the May, 2017 rent as they believe there are repairs to do to the rental unit. The Tenant said they have withheld the rent until the repairs are completed.

Further the Tenant said they Landlord owes the Tenants 688.20 for work done on the rental unit by the Tenants. The Tenant included an itemized statement of work done and receipts for the materials purchased.

The Landlord said they did not authorized the Tenant to do the repairs and in the tenancy agreement addendum it #4 it states that the Tenants may not make alterations to the rental unit without the Landlord's approval.

The Tenant continued to say the rental unit has many repair issues and the Landlord has not attended to them. The Landlord said they have made many repairs to the rental unit and have spent many thousand of dollars to upgrade the rental unit. The Landlord said they have submitted 82 pages of evidence and receipts to support her claim.

In closing the Tenant said they have not paid the May, 2017 rent of \$1,894.00 because there are repairs that need to be done to the unit immediately, so they withheld the rent. As well the Tenant said they could move out by the end of May, 2017 and the rental unit should be closed down because of the condition it is in.

The Landlord said they want to end the tenancy as soon as possible because the Tenants have approximately \$17,638.00 in unpaid rent.

Analysis

Section 26(1) says 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.

The Tenants do not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenants have not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated April 2, 2017 stands in effect. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of the Order on the Tenants.

With respect to the Tenants' monetary claim of \$688.20 it is unclear if the Tenant had authorization to do work to offset rent payments. There is some evidence with the security deposit and evidence of work done by the Tenants on the rental unit that there was some verbal discussion between the Landlord and the Tenant to do work in lieu of rent but it is unproven what his agreement referred to. A tenancy is based on paying the rent on time and if other arrangements are made to pay the rent it should be clearly defined on a rent receipt or written agreement. In this case I find no written agreement of authorization to offset rent or to make payments for work done; therefore I dismiss the Tenants' monetary claim for \$688.20 due to lack of evidence.

Further as the tenancy is ending I dismiss the Tenants' application for repairs to be done to the rental unit.

As the Tenants have not been successful in this application I order the Tenants to bear the cost of the filing fee of \$100.00 which has been paid.

Conclusion

The Tenants' application and request to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective 2 days after service of the Order on the Tenants has been issued to the Landlord. A copy of the Order must be served on the Tenants in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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 9, 2017.

Residential Tenancy Branch