



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlords' Application: OPR, MNR, MNSD, MDC, FF

Tenant's Application: CNR, MNR, MNDC, ERP, RP, RR, O, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on June 12, 2017 and by the Landlords on June 19, 2017.

The Landlords applied for an Order of Possession to end the tenancy for unpaid rent and a Monetary Order for: unpaid rent; to keep the Tenant's security deposit; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee.

The Tenant applied for the following issues:

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice");
- for the cost of emergency repairs;
- for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
- for the Landlord to make emergency repairs for health and safety reasons;
- for the Landlord to make repairs to the rental unit;
- to reduce rent for repairs, services or facilities agreed upon but not provided;
- to recover the filing fee from the Landlords; and,
- for 'Other' issues.

An agent for the Landlords, along with the wife of the Owner/Landlord, appeared for the hearing. The Tenant dialed three times into the hearing as he was in an airport at the time of the hearing with considerable background noise causing the Tenant to have to move around until I was able to hear him clearly. The parties provided affirmed testimony and no questions were asked as to how the hearing would be conducted.

Preliminary Matters

The parties confirmed receipt of each other's Applications. At the start of the hearing, I noted that neither party had provided a copy of the 10 Day Notice into evidence. The Landlord's agent

explained that they had provided documentary evidence prior to this hearing which contained a copy of the 10 Day Notice. However, the Landlord's file before me and electronic record of the file shows no documentary evidence served prior to the hearing. The Tenant also confirmed no service of evidence from the Landlord.

The Tenant testified that he had served evidence but no 10 Day Notice was before me in the Tenant's file.

Since this matter concerned the ending of the tenancy on the basis of the 10 Day Notice, it was essential for me to see it before I made any findings on the matter. Therefore, I asked the parties to confirm in oral testimony the details on the 10 Day Notice. In order to verify this, I asked both parties to also submit me a copy by 3:00 p.m. on the day of this hearing pursuant to Rule 3.19 of the Residential Tenancy Branch Rules of Procedure (the "Rules"). These were accordingly provided to me.

The Landlord's agent confirmed receipt of the Tenant's evidence served prior to this hearing. The Tenant's evidence before me at the time of the hearing consisted of 53 pages of photographs which were submitted late on July 21, 2017. The Tenant stated that he had also submitted some receipts into evidence but these were not made available to me until after this hearing had occurred, likely because they were submitted late by the Tenant on July 25, 2017.

Rule 2.3 of the Rules states that claims made in the Application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. As the matter of the 10 Day Notice was the most important issue to deal with in this hearing which had a set time of duration, I did not deal with the Tenant's monetary claims. Not all the Tenant's monetary claims are sufficiently related to the main issue of whether or not the tenancy will continue

The Tenants also explained that his Application for "Other" issues was in relation to a request for the Landlord to complete repairs to the rental unit.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled?
- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to their monetary claim?
- If the tenancy is to end, what is to happen to the remainder of the Tenant's requests?

Background and Evidence

Both parties agreed that this tenancy started on October 15, 2016 for a fixed term of one year. Monthly rent under the signed tenancy agreement is payable by the Tenant in the amount of \$3,200.00 on the 15th day of each month. No monies were exchanged for a security deposit at the start of the tenancy.

The Landlord's agent explained that since March 15, 2017, the Tenant has failed to pay any rent for this tenancy because he claims to have undertaken repair work to the rental unit. The Landlord's agent stated that the Tenant is in rental arrears for five months (\$16,000.00) of this tenancy, namely from March 15, 2017 to August 15, 2017 which the Landlords now seek to recover from the Tenant.

The Tenant explained that on February 19, 2017, there was a flood in the master bathroom. The Tenant called the Landlord and the Landlord arrived on scene with his wife. The Tenant testified that the Landlord called a plumber and when the plumber arrived the Tenant assisted the plumber to find the source of the water leak and stop it as the Tenant was a professional contractor. The Tenant testified that when the leaking was stopped he informed the Landlord that there was considerable remediation work that needed to be done as a result of the leak.

The Tenant testified that he then verbally agreed with the Landlord that the Tenant would undertake the remediation work. The Tenant testified that the Landlord agreed that the Tenant would be paid for the work after the Landlord had made an insurance claim and received the monies, or the Tenant could make deductions from his rent for the work done. The Tenant confirmed that he did not have anything in writing to this effect.

The Tenant stated that he then undertook all of the remediation work which included: mold removal; dry walling; caulking; installation of a shower; and associated clean up, some of which was completed by sub-contractor companies the Tenant had employed.

The Tenant stated that he also undertook other repairs in the rental unit, such as: repairing a leaking toilet; fixing the vacuum system; fixing the front door; and installing a fridge. The Tenant testified that the Landlord had failed to complete these repairs even after the Tenant had contacted the Landlord several times to get them done. The Tenant claims that the total work to date is in excess of \$30,000.00.

The Landlord's agent submitted that the Landlord never had any verbal conversations with the Tenant for him to undertake repairs or for him to deduct rent for services he provided.

The Landlord's wife testified that she was present with the Landlord, the Tenant, and the plumber on February 19, 2017 and after the plumber had stopped the leak there was no agreement for the Tenant to undertake repairs. The Landlord's wife testified the rental house was newly renovated and she could not understand how the leak occurred.

The Landlord's wife testified that the Tenant insisted that he had to take down the dry wall and that he could do this by himself as he was a professional contractor. The Landlord's wife testified that the Tenant did provide a bill of \$950.00 for which the Tenant was provided reimbursement for. However, no permission was given to the Tenant for him to make deductions from his rent and she denied that the Tenant was promised monies after the Landlord had made an insurance claim.

The Tenant disputed the Landlord's wife's testimony stating that the Landlord's wife was not present and part of the verbal agreement he had with the Landlord. The Tenant confirmed that he had not paid rent for this tenancy since March 15, 2017 because he wanted all his repair costs back and he wanted the Landlord to complete repairs to the rental unit that were outstanding.

The Tenant provides photographs of the work that he and the sub-contractors undertook in the rental unit. However, the Tenant provides only one plumbing invoice in the amount of \$539.00 and an invoice for the replacement cost of a fridge for \$1,219.67. The Tenant provides a copy of a bank statement showing the plumbing invoice amount being paid from his account.

The parties confirmed in oral testimony that the Tenant had been personally served with the 10 Day Notice on June 17, 2017 which had a vacancy date of June 17, 2017 due to \$9,600.00 in unpaid rent due on May 15, 2017. The copy of the 10 Day Notice provided by the Tenant after the hearing took place confirms the oral testimony of the parties with respect to the contents on the approved form.

Analysis

Section 46(1) of the Act allows a landlord to end a tenancy for unpaid rent. Section 26(1) of the Act requires a tenant to pay rent under a tenancy whether or not the landlord complies with the Act, regulation or tenancy agreement, unless the Tenant has authority under the Act to withhold or deduct from rent.

In this case, I am satisfied that the Tenant was personally served with a 10 Day Notice on June 7, 2017 pursuant to Section 88(a) of the Act. I find the 10 Day Notice was compliant with Section 52 of the Act. I also find the Tenant failed to dispute the 10 Day Notice within the five day time limits set by Section 46(4) of the Act.

Although the Act allows a Tenant to dispute a 10 Day Notice within five days of receiving it, the Tenant must prove that they had authority under the Act to withhold rent. A landlord's noncompliance with the Act is not authority to withhold rent.

In this case, the Tenant has failed to pay rent for 4.5 months of this tenancy at the time of this hearing. The Tenant relies on a verbal agreement he had with the Landlord that he could withhold rent for repair work he performed. However, the Tenant's testimony in relation to this alleged agreement was disputed by the Landlord's wife and by the Landlords' agent. In the absence of supporting evidence, such as a signed written agreement, I find the Tenant has provided insufficient evidence to show he was given authority to (a) undertake repairs to the rental unit, and (b) to deduct monies for work done from rent payable to the Landlord.

In such a case, it would be reasonable to expect that if the Tenant was going to embark on work that amounted to thousands of dollars, the Tenant would have set out in writing: the scope of

work to be performed; the value to be paid by the Landlord; and how the Tenant was going to be compensated, especially as the Tenant testified to being a professional contractor. I find the Tenant's evidence regarding the oral agreement results on one party's word against the others. Therefore, the Tenant has not met the burden to prove the alleged agreement.

Furthermore, the Tenant has failed to provide sufficient invoice evidence to show that even if he had been given permission by the Landlord to deduct repair work he had allegedly undertaken from rent monies owed, that the work and invoice evidence amounts to a value in excess of \$16,000.00 which the Tenant has failed to pay thus far in rent payments.

Therefore, I must find the Tenant has failed to satisfy me that he could withhold rent and the 10 Day Notice is upheld. Accordingly, I grant the Landlords' request for an Order of Possession to end the tenancy.

As the vacancy date on the 10 Day Notice has now passed and the Tenant is still occupying the rental unit without paying rent, the Landlords are issued with a two day Order of Possession. This order must be served on the Tenant and may then be enforced in the BC Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

As there will not be sufficient time for the Landlords to re-rent the unit for August 1, 2017, I grant the Landlords' monetary claim of \$16,000.00 for the five months of rental arrears for this tenancy.

As the Landlords have been successful in their claim, they are also entitled to recover from the Tenant the \$100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$16,100.00.

As the tenancy has now ended under my order, the Tenant's request for the Landlord to undertake repairs and emergency repairs to the rental unit are now moot issues and are accordingly dismissed. The Tenant has not been successful in his Application to cancel the 10 day Notice and therefore, I dismiss his request to recover the filing fee.

With respect to the Tenant's monetary claim and a rent reduction, I provide the Tenant with leave to re-apply. These matters were not dealt with in this hearing as the hearing time to determine the 10 Day Notice had occupied the time limit set for this hearing. The Tenant is cautioned that he bears the burden to prove his claims.

Conclusion

The Tenant has failed to pay rent in this tenancy contrary to the Act. Therefore, the Landlords' Application for an Order of Possession is granted to end the tenancy two days after service of the Order.

The Landlord is granted a Monetary Order for the unpaid rent and the filing fee totaling \$16,100.00. The Landlord's request to keep the Tenant's security deposit is dismissed as no monies for this payment were made at the start of the tenancy.

The Tenant's request to cancel the 10 Day Notice is denied. The remainder of the Tenant's requests are dismissed without leave to re-apply. However, the Tenant is at liberty to re-apply for his monetary claims which were not dealt with in this hearing.

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: July 28, 2017

Residential Tenancy Branch