



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR MNDC OLC LRE ERP RP PSF RR FF

Introduction

This hearing dealt with the tenants' applications pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47; a monetary order for compensation for damage or loss under the *Act* pursuant to section 67; authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; an order requiring the landlord to comply with the *Act* pursuant to section 62; an order that the landlord provide services or facilities required by law pursuant to section 65; an order that the landlord make repairs pursuant to section 33; an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; an order restricting the landlord's access to the rental unit pursuant to section 70; and authorization to recover the filing fee for this application 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. Both parties confirmed receipt of the other's submissions for this hearing. The tenants submitted registered mail receipts to prove the service of her Application for Dispute Resolution. The tenants confirmed that they did not submit documentary evidence. The tenants confirmed receipt of the 41 page package of evidence submitted by the landlord.

Issue(s) to be Decided

Should the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") be cancelled? Should the landlord's 1 Month Notice for Cause ("1 Month Notice") be cancelled? Or is the landlord entitled to an Order of Possession?

Are the tenants entitled to a monetary order for compensation, the cost of emergency repairs, rent reductions for repairs not done by the landlord? Are the tenants entitled to

an order that the landlord comply with the Act by making repairs, abiding court orders regarding access to the unit and providing services or facilities required by law?

Are the tenants entitled to the return of their security deposit?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on February 1, 2017 as a fixed term tenancy with a monthly rental amount of \$950.00 payable on the first of each month. The tenants continue to reside in the rental unit. The landlord continues to hold the tenant's \$475.00 security deposit.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on June 6, 2017 when the tenant failed to pay rent on June 1, 2016. The landlord testified that the tenant *refused* to pay rent. She also noted that utility bills owed by the tenant remain unpaid. She submitted copies of utility bills and provided undisputed testimony that they were not paid. The tenant acknowledged receipt of the 10 Day Notice. She testified that she paid rent on May 25, 2017 for June rent. She testified that she has a witness to her payment of June 2017 rent but the witness was unavailable to attend this hearing. The landlord did not confirm the payment of rent. The tenant did not provide a receipt for the rental payment.

The landlord issued a Notice to End Tenancy for Cause on May 11, 2017 relying on the grounds that;

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;*
- *put the landlord's property at significant risk.*

The notice refers to a police report dated May 11, 2017. The landlord did not provide a copy of the police report however the landlord provided testimony regarding his decision to call the police on May 11, 2017. The landlord testified that on the evening of May 10, 2017, the tenant and her guests were very noisy and he ultimately called the police after attempting to request the tenant and her guests quiet down. The landlord testified that he was faced with abusive language and behaviour by the tenant. The landlord was able to provide a police file number as well as a letter from the police acknowledging a request for information related to the incident on May 10, 2017.

With respect to the grounds in the 1 Month Notice (particularly disturbing the landlord or another occupant), the landlord also testified that the tenant does laundry after midnight; texts and phones the landlord very late at night (12 a.m. midnight to 4 a.m. in the morning). The landlord testified that the tenant also smokes cigarettes outside and leaves her baby unattended while she does so.

The tenant testified that there is no heat in the unit, that the front door is not working and that there are bugs in the residence. She testified that she has pictures but she did not submit photographs for this hearing. The tenant testified that she has asked the landlord to make repairs but that he has not made any repairs. The tenant sought a rent reduction for repairs not done and services unavailable at the rental unit. At the hearing, the tenant was unable to specify what repairs were needed and what services were not available to her at the rental unit. .

The landlord testified that all repairs he is aware of have been completed. She denies that she has turned off the power to the rental unit as the tenant claims. The landlord refers to text message correspondence between the parties in her materials where she acknowledges the need for repairs and arranges to address them.

The tenant testified that she has started to move out of the rental unit but she has not found a new place yet.

Analysis

I accept the landlord's testimony that the tenants failed to pay the June 2017 rent in accordance with section 27 of the Act. I find that the tenants did not pay the outstanding June 2017 rent within five days of receiving the 10 Day Notice to End Tenancy. The landlord's 10 Day Notice was issued on June 6, 2017. The tenants have been unsuccessful in disputing this notice as I find that they failed to pay rent in accordance with the Act and the agreement. The tenants have not shown that the tenancy was reinstated or that they paid rent at a later date. They are unsuccessful in their application to cancel the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant is required to vacate the premises by June 19, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

As I have found that the tenancy should end based on the 10 Day Notice, I need not consider whether the issuance of the 1 Month Notice was justified. However, I note that, based on the undisputed testimony of the landlord, I find that the landlord had sufficient grounds to issue a 1 Month Notice to End Tenancy, as well.

I find that the tenants have not provided sufficient evidence to prove that there are repairs and/or emergency repairs that the landlord has failed to address. For the tenant to be successful in seeking a monetary award (rent reduction) for repairs or services not provided, the tenant must prove that she suffered a loss – either financial or in her use of her residence - and that the landlord was responsible for that loss. The tenant must also prove the value of her loss and show that she took reasonable steps to minimize her loss. Based on the lack of evidence submitted for this hearing by the tenant, I find that the tenant has not proven any of the above.

Given that this tenancy will end and given that the tenants provided little detail of the repairs sought, I find that the tenants are not entitled to an order that the landlord comply with the Act by making repairs, to abide court orders regarding access to the unit and to provide services or facilities required by law.

As the tenants have been unsuccessful in their application, I find that the tenants are not entitled to recover the filing fee for this application.

Further, the tenants' application for the return of their security deposit is premature as they have not yet vacated the residence.

Conclusion

I dismiss the entirety of the tenant's application without leave to reapply.

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.

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 25, 2017

Residential Tenancy Branch