Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, FF; CNC, MNDC, ERP, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for damage to the rental unit, pursuant to section 67; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated June 22, 2017 ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to complete emergency repairs, pursuant to section 33; and
- authorization to recover the filing fee for their application, pursuant to section 72.

One of two tenants, "tenant NL," did not attend this hearing, which lasted approximately 83 minutes. Tenant BL ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that he had authority to speak on behalf of tenant NL, named in both parties' applications, as an agent at this hearing (collectively "tenants"). "Witness BB" testified at this hearing on behalf of the tenants and both parties had equal opportunities to question the witness.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the spelling of the landlord's first name and surname. The landlord confirmed the correct spelling during the hearing and consented to this amendment.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the landlord required to complete any emergency repairs?

Is either party entitled to monetary orders and their application filing fees?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and witness BB, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2016. Monthly rent in the amount of $2,400.00 is payable on the first day of each month. A security deposit of $1,200.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The rental unit is the entire upper floor and a suite on the main floor of a house.

The landlord seeks a monetary order of $9,300.00 for damages that she believes the tenants have caused in the rental unit. The landlord also seeks an order of possession for cause based on the 1 Month Notice. The landlord further seeks to recover the $100.00 filing fee paid for her application.

The tenants seek compensation totalling $6,000.00 from the landlord. They also seek to recover the $100.00 application filing fee. The tenants seek $1,000.00 for moving expenses if they are required to move to a new unit.

The tenants seek $1,000.00 for harassment because the landlord has issued them a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") and the 1 Month Notice. The tenant said that the rent was paid and there was no reason for the landlord to issue the 10 Day Notice because she forgot the e-transfer password. The

landlord said that she did not forget the password, the tenant never provided it, she tried to guess multiple passwords and she was out of town trying to email him with no response until she served a 10 Day Notice. The tenant said that the landlord did not inform him of any noise complaints from the other tenant in the house, the landlord issued the 1 Month Notice to get rid of the tenants since she released them from their fixed term lease in February 2017, and she imposed a "noise curfew" on them. The landlord denied imposing a noise curfew on the tenants, stated that she provided the tenants with the quiet enjoyment rules from the Residential Tenancy Branch ("RTB") so that they could abide by it since she received a complaint in December 2016 regarding noise from the tenant living on the main floor below the tenants.

The tenants also seek $4,000.00 for a rent reimbursement for having to live in a poorly-ventilated rental unit that has high humidity with water collecting on the walls, furniture and clothing. Witness BB testified that she regularly cleans the rental unit twice per week by wiping down the water stains on the walls and washing the windows particularly in winter when it is colder and damper. Witness BB claimed that she thought it was odd that the landlord's realtor asked her to wipe down the wall stains in order to show the unit and that the house "shows well" according to the realtor.

The tenants seek an order requiring the landlord to make emergency repairs to the rental unit, including improving the ventilation in order to address the mold issues. The landlord denied that such repairs are required. She said that she purchased the house brand new in 2010, that it was "built to code" and no return ventilation system was installed or required. The landlord claimed that there is no mold, mildew, or roof leaks, and that previous tenants who have lived there have not complained about these issues because they used the baseboard heaters properly and opened the windows when needed.

Settlement of Some Issues

Pursuant to section 63 of the *Act,* the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and an order. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of portions of their dispute.

Both parties agreed to the following final and binding settlement of portions of their dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on September 15, 2017, by which time the tenants and any other occupants will have vacated the rental unit;
2. The landlord agreed that her 1 Month Notice, dated June 22, 2017, is cancelled and of no force or effect.

I made a decision regarding the remainder of both parties' applications, because the parties were unable to reach a settlement on those issues.

Analysis

Burden of Proof

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Application

I dismiss the landlord's claim for a monetary order for damage to the rental unit in the amount of $9,300.00, with leave to reapply. I notified both parties during the hearing that this claim was premature, as the tenancy had not yet ended, the parties had not completed a move-out condition inspection and the landlord did not know the full extent of damage inside the rental unit.

I dismiss the landlord's claim to recover the $100.00 application filing fee, as the landlord settled a portion of her application and she was unsuccessful in her remaining claims.

Tenants' Application

I dismiss the tenants' application for a monetary order for moving expenses of $1,000.00 with leave to reapply, as the tenant has not yet incurred these costs and it is a premature claim.

I find that the tenants failed to prove that any emergency repairs are required at the rental unit. This portion of their application is dismissed without leave to reapply. Mold and mildew are not emergency repairs. The tenant claimed that the ventilation was inappropriate and the landlord said that she provided two dehumidifiers to the tenant. The tenancy is ending on September 15, 2017, shortly after the hearing on August 1, 2017.

I dismiss the tenant's claim for $4,000.00 for a rent reimbursement for eight months at $500.00 per month, for mold in the rental unit. The landlord disputed the tenants' claims. I find that the landlord dealt with the mold issues and provided two dehumidifiers to the tenants. The landlord claimed that this is an energy-efficient air-tight home. The tenants claimed that they signed the tenancy agreement for the rental unit after watching the landlord cleaning mold in front of them in June 2016. Yet they still moved into the unit. The tenants did not file an application to deal with the issues until one year later on June 6, 2017. The tenants did not provide a breakdown for the $4,000.00 claimed, stating that they were told by the RTB to claim either $5,000.00 or $28,000.00 in damages.

I dismiss the tenants' claim for $1,000.00 for harassment from the landlord. The tenants did not file any police complaints against the landlord for harassment. The landlord is legally entitled under the *Act* to issue notices to end tenancy. The landlord only issued two notices to end tenancy; one for unpaid rent and another for noise due to complaints from another tenant in the same house. I do not find these to constitute harassment and I do not find that the landlord intentionally issued them in order to abuse the process. The landlord claimed that she did not impose a "noise curfew" on the tenants, she simply provided the sections of the *Act* to the tenants that deal with quiet enjoyment, which both landlords and tenants are required to abide by.

As the tenants settled a portion of their application and were unsuccessful in the remainder, I find that they are not entitled to recover the $100.00 filing fee paid for their application.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant(s) and any other occupants fail to vacate the rental premises by 1:00 p.m. on September 15, 2017. The tenant(s) must be served with this Order in the event that the tenant(s) and any other occupants fail to vacate the rental premises by 1:00 p.m. on September 15, 2017. 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.

The landlord's 1 Month Notice, dated June 22, 2017, is cancelled and of no force or effect.

The landlord's application for damage to the rental unit of $9,300.00 is dismissed with leave to reapply.

The tenants' application for a monetary order for moving expenses of $1,000.00 is dismissed with leave to reapply.

The tenants' application for emergency repairs and monetary orders totalling $5,000.00 for harassment and rent reimbursement, is dismissed without leave to reapply.

Both parties' applications to recover the $100.00 filing fee are dismissed without leave to reapply.

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: August 01, 2017

Residential Tenancy Branch