



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR OPR MNDC OLC PSI RR RP

Introduction:

Both parties attended the hearing and gave sworn testimony. The landlord said they served the tenant with a 10 Day Notice to End the Tenancy for non-payment of rent dated July 4, 2017 to be effective July 17, 2017 by posting it on the door. The tenant said they served the landlord with their Application for Dispute dated July 6, 2017 by registered mail and the landlord acknowledged receipt. I find the documents were legally served pursuant to section 88 and 89 of the Act for the purposes of this hearing. The tenant applies for orders as follows:

- a) Pursuant to section 46 of *The Residential Tenancy Act* (the Act) to cancel the Notice to End Tenancy for unpaid rent;
- b) A rent rebate or compensation for repairs not done and services not provided;
- c) An order that the landlord do repairs; and
- d) To recover the filing fee for this application

Issues: Is the tenant entitled to any relief? Has the tenant proved on the balance of probabilities that the landlord is not maintaining the property as required by the Act and he is entitled to a rent rebate, other compensation and orders to repair? Is he entitled to recover the filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The original tenancy began February 1, 2008, rent was \$1200 a month and a security deposit of \$600 was paid. Rent was subsequently raised and was \$1300 a month as of July 1, 2014. A Notice of Rent Increase dated February 1, 2017 to be effective May 1, 2017 increased the rent by \$48 a month to \$1348 per month. The tenants have refused to pay the increase and have incurred some late fees. The Notice to End Tenancy dated July 1, 2017 stated \$1396 + \$25 late fee was owed (\$48 June increase + \$48 July increase + \$25 late fee). The landlord said the tenants paid some of the amount owed and were issued receipts "for use and

occupancy only” and not to reinstate the tenancy. They said the amount owed as of this date is \$192.

This landlord took over the building on June 1, 2017 and was provided with rent details including the legal Notices of Rent Increase which were served on certain tenants. The tenant contended that due to the amount of repairs ordered in a previous decision in 2008, the previous landlord had told them that they did not have to pay increases until everything was fixed. The landlord said they communicate with the previous manager and they were not advised of any such arrangement and were told the Notices of Rent Increases were all legally served. The Notice of Rent Increase in evidence has no notes or exceptions to the increase. The tenant then contended it was not served on him. He had not noted this dispute of lack of service on his application. The landlord said they are not prepared to settle the matter and if the tenant is unsuccessful in setting aside the notice, they request an Order of Possession effective October 31, 2017 to allow the tenant some time to move.

In evidence are rent receipts for \$1300 monthly for April, May and June 2017 and a rent receipt from March 3, 2013 showing \$1200 and still owing \$50. Several warning letters from the current landlord to all tenants note the company’s policy on the importance of paying rent on time or risking eviction notices. Another letter states that the old landlord would collect rents for June 2017 and thereafter, the new landlord would be conducting the business. Ten Day Notices were issued to the tenants dated July, August and September 2017 from the new landlord. A Statement of Account shows Zero balance as of the end of May 2017, then an outstanding balance of \$48 (the rental increase) for June 2017, July 2017, August 2017 and September 2017 plus late fees.

A Notice of Suite Entry for September 14, 2017 is in evidence for the purpose of maintenance. The landlord said they were made aware for the first time of the need for certain repairs when they received the evidence for the arbitration hearing. They said they sent the maintenance person to fix what he could and to ascertain what had to be done and what specialty contractors they needed to obtain. They have applied for a permit to replace all windows and may need other permits. This is an old building. The tenants acknowledged that some repairs had been done but many are still outstanding. They contend they are owed compensation because of lack of compliance with orders issued by the arbitrator in the 2008 Decisions against the previous landlord.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where

the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Although the tenant disputed the Notice in time, I find none of his complaints constitute valid reasons to withhold his rent. No receipts for payment by them of emergency repairs are in evidence and as discussed later, they were authorized to deduct compensation from rent in 2008 pursuant to arbitrators' orders. There is no evidence that the tenants did not make the deductions at that time.

Although the tenant alleged he had been forgiven rent increases by the previous landlord due to the repair issue, I find insufficient evidence to support his claim. The repair orders were issued in 2008 when his rent was \$1200 and his rent was subsequently raised until it was \$1300 in 2014. I find the rent increases does not support his allegation that he was not subject to rent increases due to orders issued in 2008. I also find the landlord's evidence credible that the tenant was served with the Notice of Rent Increase as they had copies of it and had discussed it with the previous landlord; again there were no caveats about the rent increase recorded on it. Furthermore, the tenant did not dispute service on his application but raised it at the hearing so the landlord had no notice of this portion of his dispute.

Section 26 of the Act requires a tenant to pay rent on time whether or not the landlord has fulfilled their obligations under the Act. I have therefore dismissed their application to cancel the Notice to End the Tenancy as they have not paid their rent. Section 55(1) (a) provides that the arbitrator must grant an order of possession of the rental unit at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. I grant the landlord an Order for Possession effective October 31, 2017.

Although the main issue was whether or not to cancel the Notice to End Tenancy, I considered the tenant's other claims. In respect to his claim that he has monies outstanding from the previous arbitrator orders, I have examined them and find that he was authorized to deduct amounts awarded (less than \$1,000) from his rent. I find it improbable that he has not done this since 2008. I dismiss this portion of his claim as he received awards at the time and was authorized to deduct them from his rent.

Regarding their current claim for compensation for lack of repair, I find the landlord's evidence credible that they first received notification of the need for repair when the tenants filed their application. To claim compensation, section 7 of the Act requires proof on the balance of probabilities that a party has violated the Act, Regulations or tenancy agreement. Section 32 requires the landlord to repair and maintain the

premises in a state of decoration and repair that complies with health, safety and housing standards required by law. The question is whether the landlord by act or neglect has violated the Act by neglecting maintenance..

I find the weight of the evidence is that the landlord received notification of the need for repair in mid July when they received the application for dispute resolution by registered mail from the tenant. The tenants agreed that the landlord has since made some repairs but some are still outstanding. The landlord said the maintenance person had fixed what he could but speciality contractors had to be hired for many items and they are trying to arrange a schedule for repairs. They are obtaining a permit to replace all the windows. This is an older building and some repairs like electrical wiring are more complicated. I find the weight of the evidence is that the landlord is not violating the Act by neglecting repair but working diligently to handle it. Since they just took over in June 2017, I find they are not responsible for landlord's neglect prior to that date. I dismiss this portion of the tenant's claim. Per their request, I advised the tenants that they may apply for Review but it must be done within a very short time of receiving the Decision.

Since the tenancy is at an end on July 17, 2017 in conformance with the Notice to End Tenancy and an Order of Possession is issued effective October 31, 2017, I find it is moot to order further repairs at this point. Hopefully the landlord will continue their diligent efforts to repair the unit as their contractors become available.

Conclusion:

I grant the landlord an Order for Possession effective October 31, 2017. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I dismiss the tenant's application in its entirety without recovery of the filing fee.

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: September 21, 2017

Residential Tenancy Branch