Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OLC, MNR, MNDC, RR, SS, LAT, FF

Introduction

This hearing was convened in response to the male Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act*) or the tenancy agreement; for compensation for loss or other money owed; for compensation for emergency repairs; for a rent reduction; for authority to change the locks; and for authority to serve documents in a different way than is proscribed by the *Act*.

The female Tenant stated that sometime in July the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents.

On August 23, 2017 the Tenant submitted 70 pages of evidence to the Residential Tenancy Branch and on September 18, 2017 the Tenant submitted 5 pages of evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was served to the Landlord, via registered mail, sometime in September of 2017. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

As the Tenant served documents in a manner that complies with the Act, I find there is no need to consider the application for authority to serve documents in a different way than is proscribed by the *Act*.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?
Is the Tenant entitled to recover the cost of dealing with a cockroach infestation?
Is the Tenant entitled to compensation for temporarily vacating a rental unit to accommodate the sale of the property?
Should the Tenant be given authority to change the locks?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on November 15, 2016;
- the Tenants are required to pay rent of $1,500.00 by the first day of each month; and
- the Tenants only paid $900.00 in rent for July of 2017.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, dated July 06, 2017, was mailed to the Tenants on July 06, 2017. The female Tenant stated that she is not certain when the Notice to End Tenancy was received. The application to dispute the Notice to End Tenancy was filed on July 14, 2017.

The Landlord and the Tenants agree that the Notice to End Tenancy declared that the rental unit must be vacated by July 19, 2017 and that the Tenants had not paid rent of $600.00 that was due on July 01, 2017.

The male Tenant stated that they withheld rent, in part, because they paid $208.95 to a pest control company to address a problem with cockroaches in the rental unit. The female Tenant stated that the problem with the cockroaches was report to the Landlord sometime in July of 2017, by telephone and “maybe” in writing”. The male Tenant stated that the problem was also reported by email, although the Tenants were unable to locate a copy of that email in their evidence package.

The Landlord stated that the Tenants did not inform her of a problem with cockroaches until they paid a portion of their rent on July 02, 2017.

The Tenants acknowledge that they did not provide the Landlord with a copy of an invoice or receipt from the pest control company, although they did provide her with a document written by the male Tenant, in which he informs her he is deducting $546.65 from the rent, $208.95 of which is for the cost of the pest control company and $50.00 of which is for labour. The male Tenant stated that the $50.00 was in compensation for the time/materials he spent blocking access points for the cockroaches.

The male Tenant stated that they withheld rent, in part, because they were required to vacate the rental unit while the unit was being shown to prospective purchasers.

The Tenant submitted a copy of a report from the pest control company which declares, in part, that a "heavy infestation of cockroaches" was detected by the pest control technician. The Landlord argued that she should not be required to pay for the cost of the pest control technician because the Tenants did not give her the opportunity to address the problem before they hired the pest control company and completed their own repairs.

The male Tenant is seeking compensation of $287.70 for having to vacate the rental unit. He stated that the rental unit is listed for sale and that on five occasions in June they had to vacate the rental unit to accommodate open houses or private viewings. He was unable to specify the amount the duration of the open houses or viewings, as they "varied". The male Tenant stated that he did not submit any evidence to corroborate his testimony that there were 5 open houses/private viewings.

The Landlord stated that there were only 2 open houses in June, which lasted for two hours on each occasion. She stated that there was only one private viewing in June, although she does not know how long that viewing lasted.

Analysis

Section 46(1) of the *Act* stipulates, in part, that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

On the basis of the undisputed evidence I find that the Tenants have not paid all of the rent they owe for July of 2017. As rent for July of 2017 was not paid when it was due,

and a portion of rent for July remains unpaid, I find that the Landlord has the right to end this tenancy, pursuant to section 46(1) of the *Act.*

On the basis of the undisputed evidence I find that the Landlord mailed a Ten Day Notice to End Tenancy for Unpaid Rent to the Tenants, which declared that they must vacate the rental unit by July 14, 2017. As the Tenants were served with a valid Notice to End Tenancy, I find that the Landlord has the right to end this tenancy, pursuant to section 46(1) of the *Act.*

As I have determined that the Landlord has satisfied the legislative requirements to end this tenancy pursuant to section 46 of the *Act*, I dismiss the Tenant's application to set aside the Ten Day Notice to End Tenancy. As the application to set aside the Notice to End Tenancy has been dismissed, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

In adjudicating this matter I considered section 33 of the *Act*, which reads:

> 33(1) In this section, **"emergency repairs"** means repairs that are
> (*a) urgent,*
> *(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and*
> *(c) made for the purpose of repairing*
> *(i) major leaks in pipes or the roof,*
> *(ii) damaged or blocked water or sewer pipes or plumbing fixtures,*
> (iii) the primary heating system,
> (iv) damaged or defective locks that give access to a rental unit,
> (v) the electrical systems, or
> (vi) in prescribed circumstances, a rental unit or residential property.
>
> (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.
>
> (3) A tenant may have emergency repairs made only when all of the following conditions are met:
>
> (a) emergency repairs are needed;
> (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
> (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Even if I accepted that the presence of cockroaches constituted an emergency repair, pursuant to section 33(1) of the *Act*, I would not conclude that the Tenants had the right to withhold rent on the basis of those repairs.

I find that the Tenants have failed to establish they had a right to withhold rent on the basis of the presence of cockroaches, in part, because they have failed to meet the burden of proving that the Landlord was informed of the infestation prior to the pest control company addressing the problem, as is required by section 33(3)(b) of the *Act*. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenants' submission that the Landlord was informed on the problem prior to the pest control company being contacted or that refutes the Landlord's testimony that she was not informed until July 02, 2017.

I find that the Tenants have failed to establish they had a right to withhold rent on the basis of the presence of cockroaches, in part, because they have failed to meet the burden of proving that they provided the Landlord with a receipt/invoice from the pest control company, as is required by section 33(3)(b) of the *Act*. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Landlord was never provided with receipt/invoice from the pest control company. I note that the male

Tenant's written account of the payment is not sufficient to satisfy this legislative requirement.

I find that the need to vacate the rental unit for prospective purchasers does not constitute an emergency repair, as that term is defined by section 33(1) of the *Act*. I therefore find that the Tenants did not have the right to withhold rent for July on the basis of periodically vacating the unit.

As I have determined that this tenancy is ending, I find there is no need to consider the Tenant's application for authority to change the locks.

On the basis of the pest control company report, I am satisfied there were cockroaches in the rental unit. I find, however, that the Tenant is not entitled to recover the cost of having a pest control company treat the infestation, as the Tenants never provided the Landlord with a copy of a receipt from the company. Section 33(6) of the *Act* stipulates that a landlord is only obligated to compensate a tenant for emergency repairs if a receipt is provided.

As the Tenant has failed to meet the burden of proving they informed the Landlord of the infestation prior to making repairs to the unit, I find that the Tenants denied her the opportunity to make the repairs herself or to hire a company of her own choosing to address the problem. I therefore find that the repairs were made prematurely and that the Tenant is not entitled to compensation for time he spent blocking access points for the cockroaches.

On the basis of the testimony of both parties I find that on at least three occasions in June of 2017 the Tenants vacated the rental unit to accommodate open houses or private viewings. I find that the Tenant has failed to meet the burden of proving that they were required to vacate the rental unit on more than three occasions for this purpose. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the male Tenant's testimony that there were five open houses/viewings or that disputes the Landlord's testimony there were only 3 open houses/viewings.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment, including, but not limited to the rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession, subject to the landlord's right of entry under the Legislation; and use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline #6 suggests that a breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these. The guideline suggests that temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment and that only frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

Given the relatively short duration of most open houses/private viewings, I find that the Tenant has failed to establish that he is entitled to compensation on the basis of having to vacate the rental unit on three occasions in June to facilitate open houses/private viewings. I find that this amount of showings constitutes a temporary and minor inconvenience, for which compensation is unwarranted. I therefore dismiss the Tenant's claim of $287.70.

I find that the Tenant has failed to establish the merit of his Application for Dispute Resolution and I therefore dismiss his application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective on September 30, 2017. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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 18, 2017

Residential Tenancy Branch