



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, RP

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied for an Order requiring the Landlord to make repairs.

The female Tenant stated that on August 22, 2017 the Application for Dispute Resolution, the Notice of Hearing, and seven pages of evidence submitted with the Application were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On September 05, 2017 the Tenants submitted an Amendment to an Application for Dispute Resolution, in which they applied to set aside a Ten Day Notice to End Tenancy, plus 6 pages of evidence to the Residential Tenancy Branch. The female Tenant stated that these documents were served to the Landlord, via registered mail, on September 05, 2017. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On September 13, 2017 the Landlord submitted 11 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via registered mail, on September 13, 2017. The female Tenant stated that this evidence was received on August 20, 2017 and it was accepted as evidence for these proceedings.

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 there a need to issue an Order requiring the Landlord to make repairs?

Background and Evidence

The Agent for the Landlord stated that the Tenants are currently required to pay rent of \$730.51 by the first day of each month. The female Tenant stated that the Tenants are currently required to pay rent of \$730.00 by the first day of each month. The parties agree that rent has not been paid for August of 2017.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of September 11, 2017, was personally served to the Tenants on September 02, 2017.

The female Tenant stated that she withheld \$50.00 in rent as compensation for cleaning up after a flood that occurred on July 10, 2017. She stated that she spent 3 hours cleaning up after the flood and that on July 13, 2017 she provided the Landlord with an invoice for time spent cleaning the unit after the flood. She stated that the Landlord did not pay her for cleaning up after the flood so she deducted it from rent due on August 01, 2017.

The Agent for the Landlord agreed that there was a flood in the unit on July 10, 2017 and that the Tenants submitted an invoice for time spent cleaning the unit after the flood. She stated that the Landlord does not believe the Tenant has the right to withhold rent as a result of cleaning up after the flood.

The female Tenant stated that she withheld the remaining portion of the rent for August in compensation for a breach of her right to the quiet enjoyment of the rental unit that is related to repairs made to the water system during the tenancy.

The female Tenant stated that most of the repairs to the water system have been completed. She stated that there is a trench, about 5 inches in depth, which needs to be filled. The Agent for the Landlord stated that the trench will be filled prior to the end of September of 2017.

Analysis

On the basis of the undisputed evidence I find that the Tenants have not paid any of the rent for August of 2017.

On the basis of the undisputed evidence I find that the Tenants received the Ten Day Notice to End Tenancy, dated September 02, 2017, on September 11, 2017. Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was September 12, 2017.

Section 46(1) of the *Residential Tenancy Act (Act)* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. As rent has not been paid and the Landlord served the Tenants with proper written notice, 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 Tenants' 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:

- (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.

In my view cleaning up flood water 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 \$50.00 from the rent that was due on August 01, 2017.

There is nothing in the *Act* that allows a tenant to arbitrarily withhold rent because the tenant believes their right to quiet enjoyment of the rental unit has been breached. As the Tenants did not have the right to withhold rent for August as a result of an alleged breach of their right to quiet enjoyment, I have not considered the alleged breach while I was adjudicating the application to dismiss the Notice to End Tenancy for Unpaid Rent.

I note that the Tenants have not applied for compensation for a breach of their right to quiet enjoyment of the rental unit, and I therefore do not need to consider that matter. The Tenants retain the right to seek compensation for a breach of their right to quiet enjoyment of the rental unit.

As the Agent for the Landlord has indicated the trench will be filled in prior to the end of September and this tenancy will be ending on September 30, 2017, I find there is no reason to issue an Order requiring the Landlord to fill the trench, as the Tenants will not benefit from that repair.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on September 30, 2017. This Order may be served on the Tenants, 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 25, 2017

Residential Tenancy Branch