



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes LANDLORD: OPC, MND, MNSD, FF
TENANT: MT, CNC, RP, FF

Preliminary matters

This hearing is a Review Hearing resulting from a review consideration application made by the Landlords dated June 21, 2017 regarding a hearing dated June 21, 2017. The Landlord was successful with their review consideration application and a new hearing was granted for today.

It should be noted the Tenants' did not file a review consideration regarding the decision of June 21, 2017.

The original hearing for these applications was held on June 21, 2017. Pursuant to rules 2.3 the Arbitrator decided to hear only the issue regarding the One Month Notice to End the Tenancy for Cause dated April 28, 2018. The other monetary and repair issues were dismissed with leave to reapply.

The Landlords said their application was dismissed due to a lack of evidence regarding the service of the One Month Notice to End Tenancy for Cause dated April 28, 2017. The male Landlord who served the One Month Notice to End Tenancy for Cause did not attend the original hearing and therefore did not prove service of the document. The review consideration application made by the Landlords included phone records that showed the male Landlord phoned into the conference call but because of a technical problem did not join the hearing. As a result the review consideration application by the Landlords was successful.

The female Landlord said the Tenants' application was dismissed because the Tenants served their application and hearing package to the Landlords by posting it on the door which is not one of the approved methods of serving an application.

Neither of the participants included a copy of the original decision in their evidence packages. I decided to review the original decision to confirm the testimony. I retrieved the decision from the Residential Tenancy Branch's data base. The decision says both applications were dismissed due to service issues. The Landlords could not prove

service of the Notice to End Tenancy and the Tenants served the Landlords their application in a method not approved by the Act.

Further the parties were informed that as in the previous decision I will only deal with the issue of the One Month Notice to End Tenancy for Cause. The monetary and repair claims are dismissed with leave to reapply. For claims to be combined on an application they must be related.

Section 2.3 of the Residential Tenancy Rules of Procedure states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Not all the claims on these applications are sufficiently related to the main issue to be dealt with together.

I therefore informed the parties that I would deal with the request to cancel or uphold the notice to end tenancy and the request for the recovery of the filing fee and I would dismiss the remaining claims with leave to reapply.

Introduction

The Landlords filed seeking to end the tenancy and for an Order of Possession, for compensation for damage to the unit, site or property, to retain the Tenants' security deposit and to recover the filing fee.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy, for repairs to the property, to recover the filing fee and for more time to make an application.

The Landlords served the Tenants with their application and Notice of Hearing by personal delivery on or about May 15, 2017 in compliance with section 89 of the Act.

The Tenants served the Landlords with their application and Notice of Hearing by posting it on the door in or about May 15, 2017. This is not in compliance with section 89 of the Act and the Tenants' application was dismissed in the decision of June 21, 2017.

As the Tenants' application was dismissed due to incorrect service of their application and Notice of Hearing (the Hearing Package) and the Tenants have not filed a review consideration application the Tenants' application is dismissed with leave to reapply within the time limitations of the Act. It should be noted the time limitation for the Tenants to apply have now passed.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?

Background and Evidence

This tenancy started on February 15, 2015 as a month to month tenancy. Rent is \$1,003.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$975.00 at the start of the tenancy. Both parties agreed a move in condition inspection report was completed at the start of the tenancy but the Landlord only submitted one page of the report into evidence. The Landlord said there is \$1,006.00 in unpaid rent. The Tenant said the Landlord has not picked the rent up that is why it has not been paid. The parties agreed to meet after the hearing and the Tenant would pay the outstanding rent.

The male Landlord said he personally served the One Month Notice to End Tenancy for Cause first on April 28, 2017 and then he served it again on May 31, 2017 with a corrected effective vacancy date on it. The female Landlord said they understand that an incorrect effective vacancy date does not void the Notice to End Tenancy but they felt they should correct the date. The Tenants confirmed receiving the Notice to End Tenancy for Cause.

The Landlord said the rental unit was built in the 1970s and as a result it has single pane windows in it, which result in moisture issues in the unit. The Landlord said they have never had moisture trouble in the unit before as previous tenants cleaned and drained the moisture away from the windows. The male Landlord continued to say he inspected the rental unit in February, 2017 and he saw moisture build up and mold developing in the rental unit. As well the Landlord said he requested the Tenants to remove a RV from the property. The Landlord said this was the start of the issues between the Tenants and the Landlords. The male Landlord continued to say the moisture and mold problems got worst because the Tenants were not maintaining the rental unit correctly and now the Landlords want to end the tenancy to protect their property. The Landlords provided two inspection reports from restoration companies and a large volume of photographs to support their claims.

Further the Landlord said the Tenants are smoking in the rental unit and they verbally agreed at the start of the tenancy that the unit was a no smoking rental unit.

The Landlords said they are requesting an Order of Possession for as soon as possible if their application is successful.

The Tenant said the building is old and the Landlord has not maintained it. The Tenant said the single paned windows weep moisture both outside and inside on to the window frame. The Tenant continued to say they have tried to deal with the moisture issue but it is not a maintenance issue it is a structural problem in the building. The Tenant said the single pane window create moisture and now are causing mold and the deterioration of the drywall and walls of the rental unit. The Tenant said this is not the Tenants' fault or problem. The Tenant said he told the Landlord about the moisture issue in the first winter of the tenancy and the Landlord did nothing to fix the problem. The male Tenant said they should not be evicted because of a problem with the windows in the rental unit.

Further the male Tenant said the Landlords told them not to smoke cigarettes in the rental unit but they could smoke marijuana in the unit so it would not bother other tenants.

The Landlord said he did not tell the Tenants they could smoke anything in the rental unit.

The male Tenant continued to say he submitted two letters from previous tenants in the rental unit that proves there has been an ongoing problem with moisture from the single pane windows. Both letters indicate there was moisture issues from the windows and the letters say the Landlord did not repair the problem.

The Landlord said they did have a few issues with moisture in the rental unit and he did provide a dehumidifier to one tenant. The Landlord said the previous moisture issues were not a problem like they are now because these Tenants are not taking care of the rental unit.

The Tenant said they drain moisture from the windows and they have used bleach to clean the areas that have mold showing up. The male Tenant said the moisture is not their problem and the mold is not a cleaning issue. The male Tenant said the single pane windows need to be replaced.

The Tenants said in closing that the moisture problem is a structural problem to the building because the building is old and the windows are single pane glass. As well the Tenant said the Landlord does not maintain the building. Further the Tenant said the Landlord has sold the rental property and the Tenants received a 2 Month Notice to End Tenancy for Landlord's Use of the Property so the tenancy is ending but they don't want to move out earlier than the effective vacancy date on that notice.

The Landlord said in closing that the Tenants have not taken care of the rental unit which has resulted in extraordinary damage. The quotes for repairs the Landlord submitted are in the amount of \$25,000. The Landlord said the Tenants have damaged the unit, smoked in the unit and he is requesting an Order of Possession for as soon as possible.

Analysis

Section 55 of the Act says:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, **dismisses the tenant's application** or upholds the landlord's notice.

The Tenants' application has been dismissed due to the Tenants serving their application and Notice of Hearing (the Hearing package) by posting it on the door which is not in compliance with section 89 of the Act. I concur with the decision of June 21, 2017 and I uphold that the Tenants' application is dismissed due to incorrect service of the Hearing package.

Further the Landlord has provided evidence that the One Month Notice to End Tenancy for Cause was served correctly to the Tenants and the Tenants confirmed receiving the One Month Notice to End Tenancy for Cause. Consequently I find the Landlord is entitled to end the tenancy as a result of the One Month Notice to End Tenancy for Cause as the Tenants' application is dismissed. I award the Landlord an Order of Possession effective October 31, 2017.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlord to retain \$100.00 of the Tenants' security deposit to recover the filing fee.

As the Tenants have not been successful in this matter I order the Tenants to bear the cost of the filing fee of \$100.00 that they have already paid.

Conclusion

An Order of Possession effective October 31, 2017 has been issued to the Landlords. A copy of the Order must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia.

The Tenants' application is dismissed.

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: October 05, 2017

Residential Tenancy Branch