



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIVE MILE HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR OPR OLC

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 November 21, 2017 to be effective December 1, 2017 personally on November 21, 2017. The landlord said they received the tenant's Application for Dispute dated November 23, 2017 personally on November 27, 2017 at 3:57 p.m. after they had filed their Application which is due to be heard in February 2018. The tenant applies pursuant to section 46 of *The Residential Tenancy Act* (the Act) to cancel the Notice to End Tenancy and to order the landlord to comply with the Act.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenancy began on December 1, 2014. The current rent is \$928 and a security deposit of \$447.50 was paid. The landlord testified that the tenant failed to pay \$280.50 of the rent for November 2017 and was served with a Notice to End the Tenancy on November 21, 2017. They said the tenant paid this balance on November 27, 2017 and was issued a receipt "for use and occupancy only" for that and for December's rent as they do not wish to reinstate the tenancy. The tenant contended he has paid all his rent over the years. The landlord requested an Order for Possession effective January 31, 2017 as the tenant is in hospital.

The tenant also applies for the landlord to comply with the Act, namely section 27 which provides in part that if a service is terminated or restricted, the tenant's rent should be reduced in an amount that is equivalent to the reduction in the value of the tenancy agreement. He said two summers ago, the elevator was out of service for repair for two months and the landlord reduced rent by 35% for some floors and 45% for the upper floors. However, he said in summer 2016, the elevator was out of service again and no

compensation was offered. He claims entitlement to 45% of his rent for two months as he is in one of the upper floors. He said the elevator problem is his only claim.

The landlord said summer 2016 was a different situation. The elevator company turned off the elevator for a few hours a day but the company accommodated anyone with need by turning it on for them. The building manager said she had talked to the tenant several times and advised him of that and all tenants were advised the elevator would be turned on for them if they advised of the need. The tenant said they were not allowed to use the elevator unless absolutely necessary during that time.

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 the evidence is that he did not pay the outstanding rent within the 5 days permitted by the Act as the Notice was served personally on November 21, 2017 and he did not pay the balance until November 27, 2017. I find the landlord did not reinstate the tenancy by accepting the balance and further rent payments as they gave him receipts noting it was for “use and occupancy only”. I dismiss his application to cancel the Notice to End the Tenancy. I find the tenancy ended on December 1, 2017 pursuant to the 10 Day Notice. 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 January 31, 2018 as the landlord agreed to allow him this additional time.

I find section 27(2) of the Act provides a landlord may restrict a service or facility, other than those referred to in section 27(1) by giving the tenant 30 days written notice and reducing the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. Although the tenant contended the tenants had been given discounts in rent on a previous summer due to the elevator being discontinued for repair, I find insufficient evidence that the elevator service was terminated in summer 2016 or significantly restricted. I find the landlord’s evidence credible that the company accommodated any tenants who had need of the elevator by turning it on for them. The landlord’s credibility on this point is supported by the tenant’s testimony that it would be turned on “if absolutely necessary”. I find insufficient evidence that this arrangement in 2016 reduced the value of the tenancy agreement as the tenants could use the elevator if

they needed it. I dismiss the tenant's claim for compensation pursuant to section 27 due to elevator repair.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply. His filing fee was waived. I grant the landlord an Order of Possession effective January 31, 2018 as they agreed. 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.

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: December 12, 2017

Residential Tenancy Branch