Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNDC, FF; CNL, MNDC, OLC, ERP, LRE

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an Order of Possession for landlord's use of property, pursuant to section 55;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated October 3, 2017 ("2 Month Notice"), pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to perform emergency repairs to the rental unit, pursuant to section 33; and
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that she was the daughter of the landlord named in this application and that she had permission to speak on his behalf as an agent at this hearing. The landlord also provided a signed written authorization to this effect with his application.

This hearing lasted approximately 93 minutes in order to allow both parties to negotiate a partial settlement of their applications, make submissions regarding their other claims, and due to repeated interruptions by both parties during the entire hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord stated that she served the tenant with the landlord's application for dispute resolution hearing package on November 19, 2017 by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. The tenant confirmed that she got a notice to pick up mail but she did not have the proper photo identification to pick it up so she could not retrieve it. I notified the tenant that as per sections 89 and 90 of the *Act*, she was deemed served with the landlord's application on November 24, 2017, five days after its registered mailing. I told her that her inability to retrieve mail due to her own issue with photo identification did not circumvent the deeming provisions of section 90 of the *Act*.

I notified both parties that I would be dealing with the landlord's application at the hearing, and note that the only written evidence submitted by the landlord in support of his application was the authorization letter for his daughter to represent him as an agent at this hearing. The landlord confirmed that although she received the wrong hearing date of January 18, 2018, on her notice of hearing from the Residential Tenancy Branch ("RTB"), she wanted to proceed with the landlord's application today because she had called the RTB prior to the hearing and it informed her that the hearing was actually scheduled for January 10, 2017, together with the tenant's application. On the basis of the landlord's consent, both parties' agreement to settle some issues, and the tenant's deemed receipt, I proceeded with the landlord's application at this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the spelling of the tenant's surname. The tenant consented to this amendment during the hearing.

Preliminary Issue – Adjournment Request by Tenant

At the outset of the hearing, the tenant requested an adjournment. She said that she had been waiting for a call back from a government authority regarding pollution control and she finally received the call and wanted to write down what was said and submit it to the RTB. When I asked why she could not testify about the conversation, she said

that she could. She stated that she also wanted to find and submit more evidence regarding mold in the rental unit as well as a list of witnesses, who would not testify, but who would agree with her version of events in support of her application. She said that she was really busy in her life and was unable to do all of this, despite having submitted her application on October 21, 2017, before the landlord's application was submitted on November 8, 2017.

The landlord opposed the tenant's adjournment request, stating that the tenant had enough time to prepare for this hearing. She stated that she took a vacation day off from work, booked ahead of time, in order to attend this hearing and she wanted to proceed. She claimed that she had called the government authorities that were previously contacted by the tenant and had information that she could present verbally during the hearing. She maintained that a delay in the hearing would not change the fact that the landlord refuses to put the hydro utilities for the rental property in his name, as requested by the tenant.

During the hearing, I advised both parties that I was not granting an adjournment of the tenant's application. I did so after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

> *Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*
>
> - *the oral or written submissions of the parties;*
> - *the likelihood of the adjournment resulting in a resolution;*
> - *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
> - *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
> - *the possible prejudice to each party.*

I find that the tenant filed this application on her own accord, as no one required her to do so. At the time of that filing on October 21, 2017, the tenant was immediately notified of this hearing date on January 10, 2017. The tenant had almost three months to prepare for this hearing and to gather any relevant evidence and witnesses. I find that the tenant can testify to her version of events verbally during the hearing.
I also find that this is an urgent order of possession issue which must be dealt with expeditiously, and that the emergency repairs that the tenant is requesting would benefit

the tenant in dealing with this matter right away. I find that delaying this proceeding could prejudice both parties.

Preliminary Issue – Severing of Monetary Claims

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply.

The tenant applied for five different claims in her application and the landlord applied for three claims in his application. I advised both parties at the outset of the hearing that the central and most important issues for this hearing were whether this tenancy would continue or end pursuant to the 2 Month Notice, whether emergency repairs were required, whether the landlord's access to the rental unit should be restricted, and whether the landlord was required to comply.

I advised both parties that if there was enough time to hear the tenant's monetary application for $23,680.00 and the landlord's monetary application for $5,000.00, I would hear it. After 93 minutes, I ended the hearing after dealing with six of the eight total issues, as well as service issues and an adjournment request by the tenant. There was no additional time for the parties to provide substantive submissions regarding the monetary claims.

Accordingly, I dismiss the tenant's monetary claim for $23,680.00 and the landlord's monetary claim for $5,000.00, both with leave to reapply. I find that there is limited prejudice to both parties in dismissing these claims with leave because they are not urgent issues. It will provide both parties with a proper chance to respond to the other party's monetary claims. I notified both parties that they would be required to file new applications and pay new filing fees, if they wished to pursue the above claims further.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to perform emergency repairs to the rental unit?

Is the tenant entitled to an order restricting the landlord's right to enter the rental unit?

Is the landlord entitled to recover the filing fee for his application?

Settlement of Some Issues

Pursuant to section 63 of the *Act,* the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of portions of their dispute.

Both parties agreed to the following final and binding settlement of portions of their dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on February 28, 2018, by which time the tenant and any other occupants will have vacated the rental unit;
    a. Both parties agreed that this tenancy is ending pursuant to the landlord's 2 Month Notice, dated October 3, 2017;
2. The landlord agreed that the tenant is entitled to one month's free rent compensation pursuant to section 51 of the *Act* and the landlord's 2 Month Notice on the following term:
    a. the tenant will not be required to pay any rent to the landlord from February 1 to 28, 2018;
3. The landlord agreed, at his own cost, to have a certified, licensed professional inspect the bathroom leak at the rental unit on January 13, 2018 at 9:00 a.m., at which time the tenant agreed to provide access to the rental unit to the landlord and any professionals, and the landlord agreed, at his own cost, to complete any recommended repairs, by January 29, 2018;
4. The landlord agreed to provide the tenant with the work order and the engineer's report regarding the toxic gas and septic at the rental unit;
    a. both parties have leave to reapply for relief at the RTB if there is a dispute regarding the above work order and/or report;
5. The landlord agreed to provide the tenant with 24 hours' written notice in accordance with section 29 of the *Act*, prior to entering the rental unit.

I made a decision regarding the tenant's application for the landlord to reconnect the hydro utilities at the rental unit and the landlord's application to recover the $100.00 filing fee, since the parties were unable to reach a settlement on those issues.

Analysis

During the hearing, the parties disputed why the hydro utilities, including the electricity, heat and hot water, were disconnected from the rental unit. The landlord said that the hydro company was investigating the matter and it was due to the tenant's non-payment of past utilities, for which it was now in the collections department. The tenant said that it was because of previous issues related to a marijuana grow-operation prior to her tenancy and the fact that she pays utilities to the other tenants living on the upper floor of the rental building and they failed to pay the hydro company. The tenant agreed that she owed hydro utilities for the rental unit to the landlord in addition to rent, and that she would continue paying for it, if the landlord reconnected the hydro utilities in his name because that is what the reconnection notice said that was given to her. The landlord refused to put the utilities in the name of the landlord because of the tenant's non-payment and due to it being a cost in addition to rent.

I dismiss the tenant's application to have the hydro utilities reconnected by the landlord in the landlord's name, with leave to reapply. I find that the tenant did not provide sufficient evidence of her claim, including copies of any hydro bills or the reconnection notice that she had in front of her during the hearing. Therefore, I am unable to determine the cause of the disconnection, whether it is due to the landlord, the tenant, or the other tenants that are not part of this tenancy.

As the landlord settled a portion of his application and the remainder was dismissed with leave to reapply, I find that he is not entitled to recover the $100.00 filing fee paid for his application.

Conclusion

The tenant is not required to pay any rent to the landlord from February 1 to 28, 2018. To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on February 28, 2018. The tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m.

on February 28, 2018. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord, at his own cost, to have a certified, licensed professional inspect the bathroom leak at the rental unit on January 13, 2018 at 9:00 a.m., at which time the tenant must provide access to the rental unit for the landlord and any professionals, and the landlord, must at his own cost, complete any recommended repairs, by January 29, 2018.

I order the landlord to provide the tenant with the work order and the engineer's report regarding the toxic gas and septic at the rental unit. Both parties have leave to reapply for relief at the RTB if there is a dispute regarding the above work order and/or report.

I order the landlord to provide the tenant with 24 hours' written notice in accordance with section 29 of the *Act*, prior to entering the rental unit.

The tenant's monetary application for $23,680.00, the tenant's application for an order requiring the landlord to reconnect the hydro utilities, and the landlord's monetary application for $5,000.00, are all dismissed with leave to reapply.

The landlord's application to recover the $100.00 filing fee is dismissed without leave to reapply.

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: January 12, 2018

Residential Tenancy Branch