Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR CNR ERP OLC PSF FF-L FF-T

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the Act"). The landlords applied for: an Order of Possession for Unpaid Rent pursuant to section 55; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants' applied for: cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46; an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; an order that the landlords provide services or facilities required by law pursuant to section 65; an order that the landlords make (emergency) repairs to the rental unit pursuant to section 33; and authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. While the landlord HS provided testimony regarding the mailing of the landlords' Application for Dispute Resolution ("ADR") to the tenants, the tenants both testified that they did not receive the landlords' ADR package. Based on the tenants' claim that they did not receive the landlords' ADR package and based on the landlords' failure to elucidate the details of the service of the ADR package, I dismiss the landlords' application in its entirety (the application for an Order of Possession and to recover the filing fee).

The tenants confirmed that they received the landlords' 10 Day Notice to End Tenancy for Unpaid Rent by regular mail on or about November 14, 2017. The tenants filed an application to cancel the landlord's 10 Day Notice. At this hearing, the landlord acknowledged that they were aware of the tenants' application to cancel the 10 Day Notice but testified that they had not received any additional evidentiary materials that the tenants submitted with respect to emergency repairs and the provision of services by the landlords.

Preliminary Matter: Res Judicata

The tenants previously applied for a repair order regarding a furnace and a rent reduction pending repair on an earlier date. The tenants presented evidence, testimony and submissions at the previous hearing and received a decision with relation to the tenants' complaints about the heating and furnace. Therefore, for the reasons below, I dismiss the tenants' application for an order that; the landlord provide services or facilities required by law; that the landlord be required to make (emergency) repairs; and that the landlord comply with the *Residential Tenancy Act*.

While the tenants argued at this hearing that their submissions were with respect to another issue, I find that the tenants' application at this hearing addressed the same issue and similar remedies under the Act. In their application, the tenants wrote (in part),

- *"… we are not supplied [with] working furnace for 3 years arbitrator state that we have been getting 50$ off our rent per month for last year and we are not entitled to any compensation. i feel that this logic is erred …"*
- *"…to date furnace has still not been repaired and have rats and other larger animals running through duct work no appointment has been made to rectify problems mould is becoming a very strong issue …"*
- *"…contacted landlord at end of last dispute resolution told him I needed to make 2 payments to cover back rent… landlord has yet to supply account # or any information regarding banking info. sent landlord a text message and tried calling but only got email stating …they needed rent …we are very cold!"*

The doctrine of *res judicata* prevents the retrying of a matter. An applicant is entitled to have full opportunity to present their evidence at hearing, which the tenants had at their previous hearing. At the previous hearing, the respondent attended and responded to the claims raised regarding the furnace/heat/repairs. The arbitrator, at that hearing, addressed the tenants' claims and provided a remedy (repair and compensation) to the issue. All of the statements included in this new application by the tenants and outlined above relate back to the same issue that was addressed in the previous hearing.

As I find the tenants' application seeking an order that the landlords comply with the Act, that he make repairs and that he provide heating facilities addresses the same tenancy and the same issue that was before the previous arbitrator, this portion of the tenants' current application is *res judicata* meaning the matter has already been conclusively decided and cannot be decided again.

An applicant bringing a claim in court or to dispute resolution bears a certain onus to present their best evidence at the time. The hearing process and the principle of *res judicata* are based on the presupposition that a claimant or applicant has a responsibility to take all steps to ensure they are able to present their best case. The adjournment process, available in all types of

proceedings, allows a claimant or applicant to provide reasons why they require more time to make their application.

In the case of the original dispute resolution hearing for the "furnace issues" raised by the tenants, the tenants were provided an opportunity to present all of their best evidence. The tenants claim that the matter has not been resolved however ongoing compensation was provided by the previous arbitrator to address that contingency. The Rules of Procedure for the Residential Tenancy Branch are in place to ensure the fairness of the process to each party. I find that it would be unfair to the landlords to address this furnace issue yet again. Therefore, I decline to consider the tenants' application for an order that the landlords comply with the Act; conduct repairs; or provide facilities to the tenants.

I note that, given my finding below, the issue of repairs to the rental unit are moot.

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled or is the landlords entitled to an Order of Possession? Are the landlords or the tenants entitled to recover their filing fee?

Background and Evidence

This tenancy began on May 1, 2016 with a current rental amount of $950.00 payable on the first of each month. The landlord testified that the tenants have failed to pay rent in full and on time in accordance with the Act since August 2017.

The landlord testified that the tenants did not pay $950.00 rent due on August 1, 2017. The landlord testified that the tenants did not pay $950.00 rent on September 1, 2017; October 1, 2017; or November 1, 2017. The tenants confirmed that they did not pay rent for these dates. The tenant NC testified that the tenants did not pay rent because their furnace did not work.

On November 3, 2017, during the course of a previous dispute resolution hearing where the tenants applied to cancel the landlords' 10 Day Notice to End Tenancy and require the landlords to make repairs, the tenants testified that they did not pay their rent because their furnace did not work. In the decision from the same date, the arbitrator wrote,

> *It was noted at hearing that the tenant now owes $950.00 rent for the months of August, September, October and November. He cannot withhold rent merely because his landlord may be in breach of his obligations.*

At this hearing, the landlord testified that the tenants did not pay rent for November 1, 2017. The tenants testified that they made a variety of attempts to pay rent to the landlords. The tenants testified that they did not have an address for the landlords so that they could attend and pay rent in cash. The tenants testified that, since they did not have an address for the landlords, they were unable to send a cheque for the rent. The tenants testified that they attempted to call

the landlord but that he did not answer. The tenant SF testified that she was able to speak to Landlord KB on one occasion. At that time, she advised the landlord that the tenants could pay rent in two payments over a period of time. A copy of an email from the landlord to the tenants was submitted as evidence for this hearing. The email made reference to the tenants' offer to make payments on the outstanding rent indicating that the landlords required the full amount of rent outstanding so that they could pay their own bills, mortgage, etc.

In the email from the landlords to the tenants, the landlord reminding the tenants of the previous decision and that they "cannot withhold rent". The email also indicated that the landlord could provide direct deposit account information if the tenants had not already sent a cheque for the outstanding rental amount.

The landlords' agent testified that they began handling the matter of the landlords' application for an Order of Possession in January 2018. The landlords' agent testified that, despite correspondence to the tenants from the landlords and the landlords' agent regarding their role in this matter, the tenants did not make any attempt to contact the landlords' agent regarding the payment of rent. The landlords' agent also pointed out that, from this hearing and the previous hearing, the tenant has addresses for the landlords. As well, the tenant has phone and email information which would have allowed them to make payment if they chose to do so.

Analysis

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to prove the validity of the basis for the notice. The landlords submits that their issuance of the 10 Day Notice is justified as the tenants have failed to pay rent for several months. The tenants did not dispute that they have failed to pay rent.

As stated in the previous decision with respect to this tenancy, section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." The tenants were not entitled, through any prior arbitration, to deduct a portion of the rent. The tenants were unable to provide sufficient evidence to prove or suggest that the landlords refused payment from them.

I accept the undisputed testimony of the landlords that the tenants failed to pay rent on: August 1, 2017; September 1, 2017; October 1, 2017; November 1, 2017; December 1, 2017; January 1, 2018; and February 1, 2018. There is no dispute between the parties that the tenants continue to reside in the rental unit. The landlord calculated the amount of unpaid rent as described above at $6550.00 which includes 7 months of unpaid rent less the cost of the tenants' filing fee from their previous application.

[7 x $950.00 - $100.00 = $6550.00]

I find that the tenant has failed to pay rent in accordance with the Act and as described in the landlords' 10 Day Notice. Therefore, the tenants' application to cancel the notice to end tenancy is dismissed as is the tenants' application to recover their filing fee. Based on my findings and in accordance with section 55(1) of the Act, the landlords are entitled to a 2 day Order of Possession.

Conclusion

The tenants' application is dismissed in its entirety.
I dismiss the landlords' application to recover the filing fee.

I grant a 2 day Order of Possession to the landlords. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: February 08, 2018

Residential Tenancy Branch