



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP LRE MNDCT OLC RR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46; 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* pursuant to section 62; an order that the landlord make repairs (or emergency repairs) to the rental unit pursuant to section 33; an order to allow the tenant(s) to reduce rent for repairs agreed upon but not provided, pursuant to section 65; and an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Tenant YM attended the hearing on behalf of both named tenants. Tenant YM confirmed receipt of the landlord's 10 Day Notice to End Tenancy. The landlord confirmed receipt of the Notice of Hearing providing the date and time of this hearing but she testified that she did not receive any evidence or other documents from the tenants. Tenant YM testified that he provided his evidence by uploading it to the Residential Tenancy Branch dispute resolution website.

Preliminary Issue: Service of Documents

Prior to considering the details of the tenants' claim, I must be satisfied that they sufficiently served the other party, allowing that party an opportunity to know the case against them and attend the dispute resolution hearing. At this hearing, Tenant YM testified that he thought that the landlord would receive his evidence when he uploaded it to the Residential Tenancy Branch dispute resolution website. He testified that he did not serve the landlord with his documentary evidence in any other manner.

Service is essential to the Residential Tenancy Dispute Resolution process: proper service of evidence is restricted by timelines and methods of service to underscore its importance. Within the fact sheets provided to the applicant by the Residential Tenancy Branch ("RTB"), the RTB Rules of Procedure (a link provided in materials) and within the Act itself, it is made clear that dispute resolution is a formal process intended to be fair to both parties. Proper service of documents is required to ensure each party is given an opportunity to review all of the evidence prior to the hearing so that they are able to respond meaningfully to the claim against them.

The landlord provided undisputed testimony that she has not had an opportunity to review the tenants' documents. I find that the tenant was unable to prove that he met the requirements of service. Therefore, I must exclude the tenants' documentary evidence and rely solely on the testimony of the parties with respect to the tenants' application.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled or is the landlord entitled to an Order of Possession for Unpaid Rent? Are the tenants entitled to a rent reduction/monetary order for the landlord's failure to make required repairs?

Background and Evidence

This tenancy began on January 1, 2018 as a 24 month fixed term tenancy. A copy of the written tenancy agreement was submitted as evidence by the landlord for this hearing. The current rental amount of \$2200.00 is payable on the first of each month. The landlord continues to hold a \$1000.00 security deposit paid by the tenants on January 1, 2018.

The landlord provided undisputed testimony that the tenant has not paid rent for April, May or June 2018. The landlord also testified that the tenant has not paid all of the utilities owed during the tenancy. Tenant YM testified that he and his co-tenant have not paid rent because of the extensive repairs needed to the rental unit. He testified that his wife and infant child live in the rental unit with him. Tenant YM submitted that he should be entitled to a rent reduction of \$800.00 per month because of the poor condition of the rental unit and the landlord's failure to make repairs.

Tenant YM testified that there are "worms" in the washroom and other parts of the rental unit. The landlord clarified, in undisputed testimony, that there are silverfish ("the bugs")

mainly in the washroom at the rental unit. The tenant testified that he has been asking the landlord to address this issue since the start of the tenancy. The landlord testified that she received the first complaint regarding the rental unit from the tenant on March 3, 2018 by text message (approximately 2 months after the start of the tenancy). She provided undisputed testimony that she sent her father to look into the issue.

The landlord provided undisputed testimony that the tenant was given pest prevention items including 'sticky strips' to assist in ridding the unit of the bugs. She testified that the tenant complained these strips were insufficient, that his infant child was getting a rash from the bugs and that the rent should be reduced. She testified that she has responded to the tenant each time he has contacted her and that, as of the date of this hearing, she has provided further information on pest control of silverfish/bugs and provided further pest control items (including spray).

The tenant testified that the faucet handle in one of the bathrooms was not installed properly: he testified that he injured his hand when the faucet handle came off. He testified that he did not go to the hospital or the doctor but that it hurt. He testified that he took a photograph of the injured hand. The landlord provided undisputed testimony that she sent her father to look into the issue: she testified that the handle needed a new washer and to be tightened. Otherwise, she testified, it was in working order.

The tenant also testified that the heat "does not work" in the rental unit: he stated that he would like an order that the landlord change the heating from electric to gas fuelled. He testified that, when the weather is cold, his family must wear sweaters and sometimes jackets. The landlord testified that, prior to these tenants' move-in, she had only recently purchased the property: she testified that the property is approximately 40 years old and that she had a full inspection done. She testified that, immediately prior to the tenants' move-in, she made any repairs suggested by the inspector. She testified that the inspector did not raise any issues with heating in the rental unit. The landlord testified that the rental unit is fully insulated.

The landlord testified that she has made efforts to please the tenants and to address the legitimate issues that the tenants have raised during their tenancy. She testified that she takes action as soon as she is notified of an issue. She submitted that the tenant is unreasonable in his demands.

Analysis

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to prove that the notice was justified and that the tenancy should end. In this case, the landlord relied on a 10 Day Notice to End Tenancy for Unpaid Rent. Tenant YM, on behalf of both tenants, did not dispute that he has not paid rent since March 2018 however he testified that he did not pay rent because there are a variety of necessary repairs at the rental unit.

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 undisputed evidence is that the tenants failed to pay the April 2018 rent when it was due and did not pay April 2018 rent within five days of receiving the 10 Day Notice to End Tenancy. I accept the undisputed evidence of the landlord that the tenants have not paid rent for March, April or May 2018. Therefore, I dismiss the tenants’ application to cancel the 10 Day Notice as they had no right under the *Act* to withhold rent, pursuant to section 26. I find that the landlord has met her burden of proof, has provided her notice in compliance with section 52 of the *Act* and is entitled to a 2 day Order of Possession, pursuant to section 55(1) of the *Act*, as provided,

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.*

With respect to the repair issues raised by the tenant in this application, section 32 of the *Act* provides the landlord and tenant obligations to repair and maintain the rental unit. The landlord’s obligations are as follows,

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

- (a) complies with the health, safety and housing standards required by law, and*

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

With respect to the tenants' application for a \$7000.00 monetary order, I reiterate that I have excluded the tenants' documentary evidence as it was not served to the landlord. I accept the testimony of the tenant that there are silverfish/bugs in the rental unit. The landlord acknowledged that the tenant had raised this issue. However, I accept the landlord's testimony that the tenants have been provided with items to assist in reducing the silverfish in the unit and that she has offered to take any other steps necessary, on request by the tenant. I find, based on the testimony at this hearing, that the landlord has taken timely and appropriate steps to address the silverfish/bugs in the rental unit. Therefore, I find that the landlord has met her obligation under the Act in maintaining the residential property and in addressing the tenants' complaint. I dismiss the tenants' application for compensation for bugs in the rental unit.

I accept the testimony of the landlord that the faucet handle was fixed within days and therefore fixed in a timely and appropriate manner. I find that the tenant is not entitled to compensation for any perceived delay in the repair of the faucet in the secondary bathroom in the rental unit. I find that he has provided insufficient evidence to show that he suffered a substantial injury or other significant disruption because of this faucet handle looseness. I dismiss the tenants' application for compensation for the broken/loose faucet handle in the rental unit. I also find that neither of the repairs sought by the tenant and addressed above would be considered "emergency repairs" under the Act.

I accept the testimony and submissions of the landlord that it is unreasonable and impractical for the tenant to require a certain type of heating system in the rental unit. I accept the submissions of the landlord that the tenant was aware of the type of heating system at move in the month of January, that he would have been aware of the efficacy of the heating system and that the heating system is in sufficient working order. I accept the undisputed evidence of the landlord that: this residential property is over 40 years old; the property was inspected professionally for any necessary repairs or failings immediately prior to the tenants' move-in; no major issues were identified. I dismiss the tenants' application for an order that the landlord install a new heating system and for compensation as a result of a lack of heat.

As explained above, I find that tenant has provided insufficient evidence to prove that he is entitled to compensation from the landlord for repairs.

Conclusion

I dismiss the tenant's application for a monetary award without leave to reapply.
I dismiss the tenant's application for emergency repairs without leave to reapply.
I dismiss the tenant's application for an order that the landlord comply with the Act without leave to reapply.

I dismiss the tenants' application to cancel the property owner's Notice to End Tenancy and, pursuant to section 55(1), I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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: June 25, 2018

Residential Tenancy Branch