



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRICHTON HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC

Introduction

This decision pertains to the Tenant's application for dispute resolution made May 22, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenant seeks the following:

1. an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice for Unpaid Rent"); and,
2. an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice for Cause").

The Tenant and the Landlord attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant testified that they sent the Notice of Dispute Resolution Proceeding package to the Landlord by registered mail June 21, 2018, which is deemed to have been received by the Landlord on June 26. The Landlord submitted that they did not receive or have the opportunity to review all of the Tenant's evidence before the hearing.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that complies with the Act.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the Notice for Unpaid Rent?
2. Is the Tenant entitled to an order cancelling the Notice for Cause, pursuant to section 47 of the Act?
3. If the Tenant is unsuccessful in cancelling the Notice for Unpaid Rent or the Notice for Cause is the Landlord entitled to an order of possession, pursuant to section 55 of the Act?

Background and Evidence

The Landlord testified that they served the Notice for Unpaid Rent in-person on the Tenant on June 6, 2018, for failure to pay rent in the amount of \$810.00 for June 2018. The Notice for Unpaid Rent was served by the Landlord's representative E.B. and witnessed by R.B.

The Tenant testified and acknowledged that he has not paid rent for June 2018. The reason that he has not paid rent is because the Landlord did not make emergency repairs that needed to be done. The Tenant testified that he sent an email on May 30, 2018, to the Landlord's building caretaker in regard to the repairs, but that nothing was done, so he withheld rent.

The Tenant went ahead and had the repairs done himself, which consisted of installing a new faucet (the previous one was old, and due to the Tenant's nerve damage in his hands caused, it was extremely difficult to turn the faucet).

The repairs also consisted of installing a new sink and five drainage lines. The sink was not draining properly and was "rotting." The drain lines were copper, which the Tenant submitted is outdated and causes damage to dishware. The repairs cost the Tenant \$1,027.00. The Tenant did not submit any receipts.

In rebuttal, the Landlord testified that they do not have any record of any communication from the Tenant regarding the emergency repairs (other than the email of May 30, 2018). The Landlord argued that it is highly irregular that the Tenant would proceed with repairs in the amount claimed, given that the amount is higher than rent. In any event, the Landlord submitted that without receipts, there is no basis on which a claim against rent could be made by the Tenant.

The Landlord testified that that the Notice for Cause was issued because the Tenant

was smoking and because the Tenant has a cat. Smoking and pets are not permitted under the written tenancy agreement (submitted into evidence). The Tenant testified that he has a cat, and that the cat is a service animal for his PTSD. Though the Tenant referred me to various documents submitted into evidence referencing his right to have a cat for reasons related to his PTSD, I was unable to locate any such document.

The Landlord did not make any submissions in response to this evidence.

The Tenant testified that he does not smoke, but rather, he cooks marijuana in his kitchen in order to make a topical pain relief cream. He has a medical marijuana license, which was submitted into evidence, permitting him to be in possession of marijuana. The Landlord did not make any submissions in response to this evidence.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the onus is on the landlord to prove, on a balance of probabilities, that the tenant did not pay rent pursuant to section 26(1) of the Act.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, *unless the tenant has a right under the Act to deduct all or a portion of the rent*. Pursuant to section 46 of the Act, the Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains that the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant testified that they did not pay, and have not paid, rent because of emergency repairs that needed to be done. Did the Tenant have a right under the Act to deduct all, or a portion, of the rent? That is the question to which I now turn.

“Emergency repairs” are defined in section 33(1) of the Act as follows:

In this section, "emergency repairs" means repairs that are
(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

The repairs done by the Tenant consisted of a faucet replacement, sink installation, and drainage lines. He noted that the sink was not draining. However, the Tenant did not provide any evidence or testify to the repairs being “urgent.” As such, I find that the repairs undertaken by the Tenant do not constitute “emergency repairs” as defined by the Act.

Even if they were emergency repairs, the Tenant is required by section 33(3) to make at least two attempts to telephone the Landlord to have the emergency repairs done. The Tenant let the Landlord know on one occasion: the email where he told the Landlord that he would not be paying rent.

Finally, even if these were emergency repairs and the Tenant had contacted the Landlord in accordance with section 33(3), a tenant may only deduct from rent the cost of such repairs if the tenant (a) claims reimbursement for those amounts from the landlord, and (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed, as is required by section 33(5) of the Act. The Tenant did neither. Furthermore, the tenant provided no receipts for any of the repairs as evidence for this hearing.

Given the above, I find that the tenant had no right under the Act to deduct all or a

portion of the rent for the repairs. As such, I dismiss the Tenant's application for an order cancelling the Notice for Unpaid Rent, without leave to reapply.

Section 55 (1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must (1) be signed and dated by the landlord, (2) give the address of the rental unit, (3) state the effective date of the notice, (4) state the grounds for ending the tenancy, and (5) be in the approved form.

I find the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued by the Landlord on June 6, 2018, complies with the requirements set out in section 52.

Given the above, I grant the Landlord an order of possession effective two days from the date on which it is served on the Tenant.

As I have granted an order of possession to the Landlord based on the Notice for Unpaid Rent, I decline to consider the Tenant's application for an order cancelling the Notice for Cause.

Conclusion

As noted above, the tenant's Application is dismissed without leave to reapply

The Landlord is entitled to an order of possession effective two days from the date on which the order is served on the Tenant, pursuant to section 55 (1) of the Act. This order may be filed in 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 Act.

Dated: July 10, 2018

Residential Tenancy Branch