Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNRT, OLC, FFT

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant seeks the following remedies:

1. an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent;
2. a monetary order for the cost of emergency repairs;
3. an order for the landlord to comply with the Act, regulations, or the tenancy agreement; and,
4. a monetary order for recovery of the filing fee.

A dispute resolution hearing was convened at 11:00 A.M. on November 23, 2018, and the landlord and his wife attended. Due to technical issues with the teleconference system, the tenant was unable to dial into the hearing until 11:17 A.M. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issue(s) of this application are 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's notice to end tenancy complies with the Act.

Issues to be Decided

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to an order for the landlord to comply with the Act, regulations, or the tenancy agreement?
4. Is the tenant entitled to compensation related to a faulty sewage pump?
5. Is the tenant entitled to compensation for recovery of the filing fee?

Background and Evidence

Before the tenant joined the hearing, the landlord testified that he issued the Notice on October 2, 2018, for unpaid rent in the amount $375.00, and served the Notice on the tenant's girlfriend (listed as a co-tenant on the Notice but not as a co-tenant on the tenant's application) at 2:46 P.M. on October 2, 2018. A copy of the Notice was submitted into evidence.

Seventeen minutes after the hearing had passed, the tenant dialled into the hearing. He testified that he started the tenancy on September 15, 2017. Monthly rent is $1,050.00. The landlords purchased and took possession of the house, in which the rental unit is located, in May 2018.

The tenant testified that problems with the pump (which pumps and lifts wastewater and sewage up from the basement suite and into the home's outgoing wastewater plumbing) shortly after they moved into the rental unit. The pump has failed on at least 5 occasions, with the result being sewage making its way into the shower. The tenants have been forced to urinate and defecate into a bucket, which must then be removed.

The parties had multiple conversations with each other about the pump, and the tenant asked the landlord to get a proper lift pump. As of November 23, 2018, there is "still no pump." The tenant testified that he has had to pull the pump out on multiple occasions and clean it. His claim for $375.00—which was later deducted from the October 2018 rent—is for his time spent in cleaning and essentially fixing the pump.

The tenant submitted that a new pump is needed, and apparently the plumber also said this, and the pump should be a proper lift station, as opposed to the 2 gallon capacity pump currently in use. There is one bathroom with one sink and a toilet and shower, and one kitchen with a sink.

In response, the landlord testified that they had their own plumber come to the rental unit on four occasions, to no avail. The landlord further testified that the tenants "keep playing with the pump" and that doing so will void the warranty. They agreed with the tenant's testimony that it is an old-fashioned pump, and that they will change the pumps, but that the tenants are uncooperative. The landlord's wife commented that the tenants "keep stopping them" and that, when the plumber is about to arrive and fix the pump, the tenant advises them that the pump is functioning. The pump is a year old. The house was built in 1960.

In his final submissions, the tenant explained that putting in a new pump with proper lift will cost "a couple of grand" and would take a couple of days to install, requiring some concrete work. He commented that he has never stopped the landlord from fixing the pump, and finally, cleaning the pump does not void the warranty. The tenant deducted $375.00 from the rent because that is the amount that the landlord wanted the tenant to pay for a new pump.

Text messages, dated September 27, 2018, from the tenant to the landlord states "So 15x30=450-80 for plumbing 370 so ill subtract that from the rent and give yo a receipt with rent" and "So rent will be 680" to which the landlord responds, "What you are taking about," "You have to pay extra $84 plus rent $1050".

The landlord testified that they never told the tenant to buy a pump. The landlord's wife closed submissions by saying that the tenant is deliberately "trying to screw up" the pump in order to justify not having to pay the full rent.

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.

I will turn first to the issue of the Notice. Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The landlord testified that the tenant withheld $375.00 of rent, and that is the basis for which they issued the Notice.

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, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Section 33 of the Act allows for a potential deduction of the rent.

Section 33(1), which deals with emergency repairs, defines “emergency repairs” to mean 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, among other things, damaged or blocks water or sewer pipes or plumbing fixtures. For the purposes of this case , I find that an inoperable pump as described by the parties falls within the definition of “plumbing fixtures.

Subsection 33(7) of the Act states that “If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.”

Subsection 33(5) states that “A landlord must reimburse a tenant for amounts paid for emergency 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.”

In this case, the amount “claimed” by the tenant is for his labour involved in cleaning the pump and determined that this to be in the amount of $375.00. There is no evidence before me to find that the tenant at any point claimed reimbursement from this amount from the landlord, and no evidence that the tenant ever gave the landlord a written account of the emergency repairs with any type of receipt. The tenant unilaterally, and without permission from the landlord, decided to deduct this rather amount from rent. The tenant had no legal right under section 33(7) of the Act to deduct any amount from rent without first seeking reimbursement from the landlord.

While the tenant is obviously frustrated with the inadequate pump and the ensuing, disgusting mess from backed up sewage, and has taken it upon himself to get the pump back into working order on multiple occasions, none of this in and of itself gives him the legal right to not pay the landlord rent. In addition, the tenant did not submit any evidence demonstrating that the landlord asked the tenant to purchase the pump. There are, I recognize, back and forth text communication regarding the pump issues, but in no text is there any request by the landlord to the tenant that he purchase a pump.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the Notice was issued, and I find that the tenant has failed to establish that he had a right under the Act to deduct any amount from rent.

Having found that the Notice is valid, and that the tenant had no right under the Act to deduct from the rent, I dismiss the remainder of the tenant's application without leave to reapply.

Finally, section 55 (1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their application 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. Having reviewed the Notice, I find that the Notice issued by the landlord on October 2, 2018 complies with the requirements set out in Section 52.

Conclusion

I hereby dismiss the tenant's application without leave to reapply.

I hereby grant the landlord an order of possession, which must be served on the tenants and is effective two days from the date of service. 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: November 23, 2018

Residential Tenancy Branch