Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, PSF, RR, FFT

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to sections 46 and 55;
- an order regarding the tenants' dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's agent and Tenant M.B. attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Tenant M.B. (the tenant) stated that they were representing the interests of both tenants.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and an evidentiary package which were left with an agent of the landlord on November 06, 2018. In accordance with sections 88 and 89 of the *Act,* I find that the landlord was duly served with the Application and an evidentiary package.

The landlord testified that their evidence package was sent to the tenants by registered mail on November 14, 2018. The landlord provided the Canada Post tracking number to confirm this registered mailing which shows that the notice card was left on November 20, 2018, and the package was available to pick up the same day. The tenant stated that they

had the notice of the registered mailing in hand but that they had not picked up the evidence as it was in the other tenant's name. As this evidence package has been available for pick up since November 20, 2018, I find that the tenants are deemed served with the evidence package on this same date pursuant to sections 88 and 90 of the Act.

The tenant confirmed that they received the 10 Day Notice on November 03, 2018, which was served to them by registered mail on November 01, 2018. In accordance with section 88 of the *Act,* I find that the tenants are duly served with 10 Day Notice on November 03, 2018.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order regarding the dispute of an additional rent increase by the landlord?

Are the tenants entitled to an order for the landlord to provide services or facilities required by law pursuant to section 65?

Are the tenants entitled to an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65?

Are the tenants entitled to authorization to recover the filing fee for this application from the landlord?

Background and Evidence

Written evidence was provided that this tenancy began on October 01, 2014, with a current monthly rent in the amount of $959.23 which is due on the first day of the month and security deposit in the amount of $462.50. The tenancy agreement indicates that heat is included as a part of the rent.

A copy of the signed 10 Day Notice, dated November 01, 2018, and identifying $236.82 in unpaid rent with an effective date of November 11, 2018, was provided in the evidence by the tenant.

The tenants also provided in evidence:

- A copy of a letter from the landlord to the tenants advising them that the tenants did not pay the full amount of rent for November 01, 2018;
- A copy of the call history from the tenants to the landlord which indicates that the tenants called the landlord on August 29, 2018, September 13, 2018, September 14, 2018, September 17, 2018 and September 19, 2018;
- A copy of an invoice to the tenant from a plumbing company dated September 20, 2018, in the amount of $198.45 to turn on pump to get boiler going; and
- A copy of a letter advising the tenants of a rent increase effective as of October 01, 2017.

In addition to some of the items listed above, the landlord provided:

- A copy of the tenants' rent cheque for November 2018 indicating that $198.45 was deducted for a plumber to turn the heat on and a copy of the invoice for the plumber to attend the residential premises in the same amount;
- A copy of an invoice from the landlord's plumbing company dated September 20, 2018, to turn on the heat;
- A copy of an invoice from the landlord's plumbing company dated September 24, 2018, to repair seal bearing assembly due to squeaky noise from mechanical room; and
- A copy of a graph showing the Weather in Burnaby from September 20, 2018, to September 26, 2018, showing a low temperature of 11 degrees Celsius and a high temperature of 15 degrees Celsius for September 20, 2018. The Weather in Burnaby also indicates a low temperature of 7 degrees Celsius for September 18, 2018;

The tenant testified that they spoke with an agent of the landlord on August 29, 2018, regarding the lack of heat in the rental unit and was advised that the heat was turned on. The tenant submitted that he called the landlord on multiple days including on September 17, 2018, and September 19, 2018, without any response from the landlord. The tenant stated that the agent of the landlord refused to acknowledge that the temperature in the rental unit was unacceptable during certain periods of low temperature and advised the tenants to use sweaters and blankets. The tenant maintained that heat is included as a part of the tenancy agreement, that they were being denied a facility that they are paying for as a part of the rent and should have access to the heat when the weather becomes colder.

The tenant submitted that they were advised by an Information Officer to call a plumber to restore the heat in the rental unit and to deduct the amount of the plumber's invoice from the monthly rent owed to the landlord. The tenant stated that they provided a copy

of the plumber's invoice to the landlord and deducted the amount from the November 2018 rent.

The landlord stated that they already had a request for the heat to be turned on in the building at the time that the tenant had called a plumber. The landlord testified that they had tried to have the heat turned on for September 20, 2018, but that there were repairs to the heating equipment that needed to be completed which were finished on September 24, 2018.

The landlord referred to their evidence and submitted that the temperature was not that cold on the date the tenant called their own plumber to the residential premises. The landlord could not understand how the tenants' plumber was able to turn on the heat when it needed repair and referred to an invoice dated September 24, 2018, for needed repairs in the mechanical room. The landlord maintained that emergency repairs were not required as the situation was not urgent due to the mild weather in September 2018.

Analysis

Section 33 of the *Act* allows for a tenant to complete an emergency repair when the landlord has not completed the emergency repair in reasonable amount of time. Section 33(1) of the *Act* defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of residential property, for the purpose of repairing major leaks in pipes or roof, damaged or blocked water or sewer pipes or plumbing repairs, primary heating system, damaged or defective locks that give access to a rental unit, electrical systems or in prescribed circumstances, a rental unit or residential property. Section 33

Section 33 (3) states that a tenant may only make emergency repairs when the emergency repairs are needed, the tenant has made at least two attempts to call the landlord and has given the landlord a reasonable time to make repairs. Section 33 (5) of the Act states that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Having reviewed the evidence and testimony I find that tenants called the landlord more than twice and gave the landlord reasonable time to complete the repairs; however, the emergency repair completed by the tenants does not match the definition of what constitutes an emergency repair pursuant to section 33 of the *Act*. I find that the weather from the end of August 2018 to September 20, 2018, was not below freezing

and that, although it may have been uncomfortable for the tenants, the repairs were not necessary for the safety of anyone and therefore were not urgent.

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenants must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As I have found the 10 Day Notice was duly served to the tenant on November 03, 2018, I find that the tenants had until November 08, 2018, to dispute the 10 Day Notice or to pay the full amount of the arrears.

I find that the tenants submitted their Application on November 05, 2018, within the five day time limit permitted under section 46 (4) the Act. I further find that the tenants did not pay the full amount of the arrears in that same timeframe; however, section 66 (2) of the Act allows an Arbitrator to extend the time limit established by section 46 (4) of the Act, for a tenant to pay overdue rent, when the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs.

I find that the tenants provided the landlord with a written account of the repairs on the cheque provided for November 2018 rent and a copy of the invoice for the emergency repairs completed in accordance with section 33 (5) of the Act. I find that the tenants have deducted the unpaid amount because they believed that the deduction was allowed for emergency repairs. Therefore, pursuant to section 66 (2) of the Act, I order that the time limit for the tenants to pay the overdue rent in the amount of $198.45 be extended to December 31, 2018. The tenant must pay the overdue amount by this date or the landlord is at liberty to apply for an Order of Possession based on the 10 Day Notice dated November 01, 2018. If the tenants pay the overdue amount by December 31, 2018, the 10 Day Notice will be cancelled and of no force or effect.

Section 41 of the *Act* states that a landlord must not increase rent except in accordance with sections 42 and 43 of the *Act,* which only allow for a rent increase at least 12 months after the effective date of the last rent increase, served in the approved form, at least 3 months before the effective date of the increase and by an amount calculated in accordance with the regulations.

I find that the notice of rent increase provided to the tenants is not on the approved form and therefore is not in compliance with section 42 (3) of the Act. For the above reason I find that the landlord’s rent increase is not in accordance with the Act and I order that the monthly rent for the rental unit is $959.23 until increased in accordance with the Act.

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement. Section 27 of the Act also establishes that a landlord may terminate or restrict a service or facility, that is not a material term or is essential to the tenants' use of the rental unit as living accommodation, if they give 30 days' notice in the approved form and reduce the rent in an amount that is equivalent to the reduction in value of the tenancy.

Section 65 of the Act allows an arbitrator to make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Having reviewed the evidence and testimony, I find that heat is included as a part of the tenancy agreement and that it is essential to the tenants' use of the rental unit particularly in the non-summer months. I find that the landlord has confirmed in their evidence that there was no heat in the building prior to September 20, 2018, when the landlord's plumbing invoice indicates that the heat was turned on at that time.

I find that the graph of temperatures for Weather in Burnaby submitted by the landlord indicates that the outside temperature dropped to 7 degrees Celsius on September 18, 2018. Although not an emergency, I find that the tenants had the right to have access to heat in their rental unit as they are paying for it as a portion of the monthly rent as per the tenancy agreement. I find that the landlord has not provided a facility that was agreed upon in the tenancy agreement and for this reason they were in violation of the Act and the tenancy agreement. I find that the lack of access to heat reduced the value of the tenancy during this period of time.

RTB Policy Guideline #16 states that an arbitrator may award nominal damages where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Although the tenants have not demonstrated a significant loss, I find that there has been an infraction of their legal right to have access to heat under their tenancy agreement. For this reason I award the tenants nominal damages in the amount of $40.00 for a facility agreed upon but not provided in September 2018.

I find that the tenants are partially successful with their Application as they successfully disputed a rent increase and obtained a rent reduction for services agreed upon but not

provided; however, the 10 Day Notice has not been cancelled as the time limit was extended due to the tenants not being legally entitled to withhold a portion of the rent for emergency repairs. For these reasons I allow the tenants to recover a portion of the filing fee from the landlord in the amount of $60.00.

Conclusion

Pursuant to sections 46 and 66 of the Act, I order that the tenants must pay to the landlord the amount of $198.45 by December 31, 2018, for the deduction that was not permitted under the Act due to the plumbing repair not being an emergency.

Pursuant to sections 65 and 72 of the *Act,* I order that the tenants may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of $100.00, for services agreed upon but not provided and to recover a portion of the filing fee for this application.

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: December 11, 2018

Residential Tenancy Branch