



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, ERP, RP, OLC, FFT

Introduction

On November 16, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a 10-Day Notice to End Tenancy for Unpaid Rent, for a Monetary Order for compensation, to order the Landlord to make repairs and emergency repairs, to order the Landlord to comply with the Act, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord Representatives and Tenant (who represented the rest of the Tenants) attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenants submitted six separate claims as part of this Application and I was aware that we would not have the time to get to all of them during today’s hearing. I asked the Tenant to prioritize the issues that she wanted to address in this hearing and she stated she wanted to first deal with the monetary claim for compensation and whether the tenancy would continue. For these reasons, I dismissed the request to order repairs and emergency repairs and to order the Landlord to comply with the Act, with leave to reapply, in accordance with Rule 2.3 in the *Residential Tenancy Branch – Rules of Procedure*.

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the following testimony and evidence was heard, and a Decision made by myself (the Arbitrator).

Issues to be Decided

Should the 10-Day Notice to End Tenancy for Unpaid Rent, dated November 14, 2018 (the "Notice"), be cancelled, in accordance with Section 46 of the Act?

Should the Tenants receive a Monetary Order in compensation for living without electricity in a portion of their rental unit, in accordance with Section 67 of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

If the Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Background and Evidence

The parties agreed to the following terms of the tenancy:

The tenancy began on June 1, 2018 and was revised on September 18, 2018, to add two more tenants and to extend the six-month fixed term. The rent of \$1,500.00 was due on the first of each month and the Landlord collected a security deposit of \$750.00 and a pet damage deposit of \$750.00.

The background of this dispute is based on the Tenants moving into the rental unit in June of 2018 and learning that a portion of the unit did not have electrical service. The Tenants requested the Landlord to address the issue and by the time the Tenants applied for Dispute Resolution, on November 16, 2018, the Landlord had still not fixed the electrical issues. The Tenants did not pay their rent for November or December

2018 as they expected some compensation from the Landlord for living without electricity.

Cancellation of Notice:

The Landlord testified that the Tenants failed to pay their rent on November 1, 2018 and, therefore, the Landlord issued the Tenants the 10-Day Notice to End Tenancy for Unpaid Rent, dated November 14, 2018, on November 15, 2018, by personally serving it to the Tenants. The Notice stated that Tenants were currently in rental arrears for \$1,500.00, plus \$25.00 in late fees. The Notice contained a move-out date of November 25, 2018.

The Landlord stated that the Tenants did not pay their rent for December 2018, and are in arrears for 2 months rent, plus late fees, for a total of \$3,035.00.

The Tenant testified that that they received the Notice on November 15, 2018 and had not paid their rent for November or December 2018.

Monetary Claim for Compensation:

The Tenant testified that the Tenants have been living without electricity in about half of the rental unit since the beginning of the tenancy. She stated that there was no electricity in two of the three upstairs bedrooms, only half the kitchen, none in the living room, lobby or porch and no electricity in the staircase and hall. The Tenants submitted evidence that documented correspondence between the Landlord and the Tenants regarding the need to bring the rental unit to code (electrical code).

The Tenant felt that the Landlord delayed the repairs and the work was not completed until December 3, 2018, only after the Tenants applied for Dispute Resolution. The Tenants have requested compensation for the six months that they occupied the rental unit without full services. The Tenants have requested one month's rent as compensation, in the amount of \$1,500.00.

The Landlord stated that they had difficulty arranging estimates and booking electricians to do the extensive amount of electrical that was required in the rental unit. The Landlord stated that the electricians weren't able to commit to a date to complete the work until December 3, 2018. The Landlord argued that only about 1/3 of the rental unit did not have electrical services; however, that the issue had now been fully addressed.

The Landlord agreed that the Tenants were due some compensation; but, did not have the authority to agree to an amount over \$750.00.

Analysis

Section 26 of the Act explains that the Tenants 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. As I do not have any evidence before me that the Tenants had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

The Landlord provided undisputed evidence that the Tenants received the Notice on November 15, 2018. The Notice provided a move-out date of November 25, 2018. As the Landlord has established that the Tenants have failed to pay their rent for November and December 2018, I find the reasons for the issuance of the Notice are valid. As a result, I dismiss the Tenants' claim to cancel the Notice.

Section 55 of the Act requires that when a Tenant submits an Application 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 is compliant with the Act.

Section 52 of the Act requires that any Notice to End Tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form.

I find the Notice to End Tenancy, issued by the Landlord on November 15, 2018, complies with the requirements set out in Section 52.

I find that the Landlord should receive an Order of Possession for the rental unit, in accordance with Section 55 of the Act.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant

must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence presented by the Tenant that the Tenants experienced the first six months of their tenancy without full electrical services, regardless of bringing this issue to the Landlord's attention at the beginning of the tenancy. Although there were some disagreements as to the extent of the rental unit that was without electricity, the Landlord did acknowledge that it was about one-third of the rental unit.

According to Policy Guideline 22, an "essential" service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service is essential to the Tenant's use of the rental unit as living accommodation, the Arbitrator will hear evidence as to the importance of the service and will determine whether a reasonable person in similar circumstances would find that the loss of the service has made it impossible or impractical for the Tenants to use the rental unit as living accommodation.

As a result of the testimony and evidence provided, I find that the Tenants have established that the Landlord failed to provide the essential service of electricity to at least one third of the rental unit for a period of six months, contrary to Section 27 of the Act. Although the Tenants only claimed one month's rent as potential compensation for living without the full service of electricity, I find it reasonable to compensate the Tenants as follows:

As the monthly rent for the unit is \$1,500.00 and the Tenants were without an essential service to one-third of their rental unit for six months, I find that the Landlord should compensate the Tenants for one-third of the rent for six months. The Tenants have established a monetary claim in the amount of \$3,000.00 ($1/3 \times \$1,500.00 = \500.00 ; 6 months $\times \$500.00 = \$3,000.00$).

As the tenancy is ending and the Tenants have acknowledged that they did not pay their November or December 2018 rent, it does not make sense for me to provide a Monetary Order to the Tenants for the \$3,000.00 monetary claim that they have established. Instead, I authorize that the Tenants do not have to pay the November and December 2018 rent and can continue to occupy the rental unit until December 31, 2018.

However, the Tenants will have to provide vacant occupancy of the rental unit on December 31, 2018, in relation to the Order of Possession that I issue to the Landlord.

The Tenants have been only partially successful with the Application and I find that the Tenants should not be compensated for the cost of the filing fee.

Conclusion

The Tenants have established a monetary claim for the amount of \$3,000.00, in compensation for living without full electrical services for six months. Rather than ordering the Landlord to pay the Tenants the \$3,000.00 and because the Tenants have failed to pay their rent for two months in the amount of \$3,000.00, I order that the November and December 2018 rent be considered as paid in full by the Tenants.

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective on December 31, 2018 at 1:00 p.m. This Order should be served on the Tenants as soon as possible. Should the Tenants 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: December 13, 2018

Residential Tenancy Branch