



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDCT, ERP, RP, OLC, LRE

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied:

- to cancel a Notice to End Tenancy for Unpaid Rent;
- for a monetary Order for money owed or compensation for damage or loss;
- for an Order suspending or setting conditions on the Landlord's right to enter the rental unit;
- to recover the cost of making emergency repairs;
- for an Order requiring the Landlord to make repairs;
- for an Order requiring the Landlord to provide services or facilities;
- for authority to reduce rent for services or facilities agreed upon but not provided; and
- for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement.

The Tenant stated that on November 16, 2018 the Application for Dispute Resolution, the Notice of Hearing, the Amendment to the Application for Dispute Resolution, and 25 pages of evidence submitted to the Residential Tenancy Branch were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On December 03, 2018 the Landlord submitted 24 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on November 27, 2018. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. The Tenants have identified several issues in the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

I find that the most urgent issues relate to possession of the rental unit and I will, therefore, only consider issues related to that matter, which include:

- the application to cancel a Notice to End Tenancy for Unpaid Rent;
- the application for an Order suspending or setting conditions on the Landlord's right to enter the rental unit, as that may interfere with the Tenants' right to occupy the rental unit; and
- the application to recover the cost of emergency repairs, as that matter may relate to the Tenants' right to withhold rent.

The balance of issues in dispute is dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Is there a need to suspending or set conditions on the Landlord's right to enter the rental unit?

Are the Tenants entitled to recover the cost of emergency repairs?

Background and Evidence

The Landlord and the Tenant agree that the Landlord and the male Tenant entered into a verbal tenancy agreement, for which the Tenant agreed to pay monthly rent of \$700.00 by the first day of each month.

The Tenant contends that the Landlord also entered into a verbal agreement with the female Applicant, who moved into the rental unit with the Tenant. The Agent for the Landlord stated that the female Applicant moved into the unit at the same time as the Tenant, but the Landlord never entered into a verbal tenancy agreement with her.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of November 16, 2018, was personally served to the female Applicant on November 06, 2018. The Tenant stated that he received this Notice to End Tenancy from the female Applicant on November 09, 2018.

The Agent for the Landlord stated that no rent was paid for September of 2018. The Tenant stated that on September 01, 2018 he paid rent of \$700.00, in cash, for September.

The Landlord and the Tenant agree that rent was typically paid in cash and that a receipt was typically not provided, although one was provided on one or two occasions.

The Landlord and the Tenant agree that no rent was paid for October of 2018. The Tenant stated that on October 03, 2018 the Landlord and the Tenant agreed that the Tenant would build a pump house for the Landlord.

The Agent for the Landlord stated that the agreement was the pump house would be built in lieu of rent for September of 2018. The Tenant stated that there was an agreement that the time he spent building the pump house would be deducted from the rent, although they did not discuss which month(s) the deduction would apply to nor did they discuss the amount of the deduction.

The Landlord and the Tenant agree that the pump house has been built, although the Landlord contends there are some deficiencies with the construction.

The Tenant stated that on October 02, 2018 he sent the Landlord a text message in which he informed the Landlord it would cost \$1,300.00 to frame the pump house. The Agent for the Landlord stated that the Landlord does not recall receiving this text message. A copy of this text message was not submitted in evidence.

The Landlord and the Tenant agree that no rent has been paid for November of 2018. The Tenant stated that on November 02, 2018 he offered \$265.00 in cash to the Landlord for rent for November of 2018, but the Landlord refused to accept it. The Agent for the Landlord stated that this cash payment was not offered.

The Tenant stated that on November 02, 2018 he gave the Landlord an invoice, a portion of which was \$750.00 in labour for framing the pump house and \$385.00 for supplies. The Agent for the Landlord stated that this invoice was not received until it was served to the Landlord as evidence for these proceedings.

The Agent for the Landlord stated that sometime in November of 2018 the Landlord paid the Tenant \$385.00, in cash, for the supplies used to build the pump house. The Tenant denies receiving this payment.

In support of the application to recover costs of emergency repairs the Tenant stated that he is seeking compensation for repairs he made to the rental unit, which included repairing floors, removing mold, and installing interior doors.

The Tenant stated that the Landlord has entered the rental unit on several occasions without knocking or providing proper notice. The Landlord denies this allegation. The Tenant stated that the Landlord has not entered without proper notice since May of 2018.

The Tenant stated that the Landlord has turned off the water supply without notice on three separate occasions. The Landlord denies this allegation.

Analysis

On the basis of the undisputed evidence I find that the Landlord and the Tenant entered into a verbal tenancy agreement which required the Tenant to pay rent of \$700.00 by the first day of each month.

As the Landlord does not acknowledge entering into a verbal tenancy agreement with the female Applicant and the female Applicant did not attend the hearing to provide evidence of a verbal tenancy agreement, I find there is insufficient evidence to conclude that those parties entered into a verbal tenancy agreement. I find that the Tenant's testimony regarding that agreement is simply insufficient to dispute the Landlord's position on that matter.

On the basis of the testimony of the Agent for the Landlord, I find that the Ten Day Notice to End Tenancy for Unpaid Rent that is the subject of these proceedings was served to the female Applicant on November 06, 2018. As there is insufficient evidence to conclude that she has a tenancy agreement with the Landlord, I cannot conclude that she is a tenant of the rental unit. On the basis of the undisputed evidence I find that she resides in the rental unit and is, therefore, certainly an occupant of the rental unit. As the female Applicant is an adult who lives in the rental unit, I find that the Ten Day Notice to End Tenancy was served to the Tenant in accordance with section 88(e) of the *Residential Tenancy Act (Act)*.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant received the Ten Day Notice to End Tenancy from the female Applicant on November 09, 2018. As the Tenant filed the Application for Dispute Resolution on November 13, 2018, I find that it was filed within 5 days of the Tenant receiving it, as is required by section 46(4) of the *Act*.

When a landlord is attempting to end a tenancy the landlord bears the burden of proving there are grounds to end the tenancy. When a landlord is attempting to end a tenancy on the basis of unpaid rent, the landlord bears the burden of proving that rent has not been paid.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts help to establish when a rent payment has not been made. When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made. When a tenant has previously made cash payments and has not been regularly provided with receipts, there is no expectation that the tenant will provide a receipt for a cash payment that has been made.

In these circumstances the Landlord's failure to regularly provide receipts for cash payments made during this tenancy has significantly impaired the Landlord's ability to prove that the Tenant did not pay rent in cash for September of 2018. The Landlord did not submit any other evidence, such as a copy of a payment ledger, to corroborate the Landlord's submission that the Tenant did not pay \$700.00 in rent for September of 2018 or to refute the Tenant's testimony that he paid rent for September in cash. I therefore find that the Landlord has failed to establish that rent is due for September of 2018.

On the basis of the testimony of the Landlord, I find that on October 03, 2018 the Landlord agreed to allow the Tenant to withhold the equivalent of one month's rent in exchange for building a pump house. I therefore find that the Tenant had the right to withhold rent for one month as compensation for building the pump house. As the Landlord has failed to establish that rent was not paid for September of 2018 and both parties acknowledge that rent was not paid for October of 2018, I find it reasonable to conclude that the Tenant should be exempted from paying rent for October in compensation for building the pump house. I therefore find that the Landlord has failed to establish that rent is due for October of 2018.

Section 26(1) of the *Act* requires tenants to pay rent when it is due, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. When a tenant alleges they have the right to deduct all or a portion of the rent, the Tenant bears the burden of proving that submission.

I find that the Tenant has submitted insufficient evidence to establish that he had the right to withhold any rent from November of 2018. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's submission that the Landlord agreed to compensation for costs and labour of building the pump house or that refutes the Landlord's submission that the Landlord only agreed to compensate the Tenant in an amount that is equivalent to one month's rent. I therefore find that the Tenant has failed to establish that he had the right to withhold rent for November of 2018.

On the basis of the undisputed evidence I find that no rent has been paid for November of 2018. As the Tenant has not established that he had the right to withhold rent for November of 2018, I find that he owes the Landlord \$700.00 in rent for November of 2018.

In adjudicating this matter I have placed no weight on the Tenant's submission that the Landlord refused his offer to pay \$265.00 in rent for November. Even if this submission is true, the submission is not relevant to my conclusion that \$700.00 in rent for November of 2018 remains unpaid. Even if the Tenant did attempt to pay \$265.00 in rent for November and the Landlord accepted that payment, I would conclude that rent of \$345.00 was still due for November of 2018.

In adjudicating this matter I have placed no weight on the Tenant's submission that on October 02, 2018 he sent the Landlord a text message in which he informed the Landlord it would cost \$1,300.00 to frame the pump house. I have placed no weight on this submission, in part, because the Landlord does not recall receiving the message. I have placed no weight on this submission, in part, because even if that text message was sent it does not establish that the Landlord agreed to pay \$1,300.00 to have the pump house built.

In adjudicating this matter I have placed no weight on the Landlord's submission that there are some deficiencies with the construction of the pump house or on the Tenant's submission that he has not been paid for supplies used to build the pump house. I find that these submissions relate to an employment contract between the two parties, which exceeds my jurisdiction in this matter. My jurisdiction is limited to issues that relate to the Landlord's and the Tenant's verbal tenancy agreement. I do not have authority to determine whether the pump house was properly constructed or whether the Landlord has paid the Tenant for costs associated to building the pump house.

Section 46 of the Act authorizes a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. As the Tenant had not paid all the rent that was due on November 01, 2018 and he was served with a Ten Day Notice to End Tenancy for Unpaid Rent later that month, I find that the Landlord had the right to end this tenancy pursuant to section 46 of the *Act*. I therefore dismiss the Tenants' application to set aside the Ten Day Notice to End Tenancy that is the subject of this dispute.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Section 33 of the *Act* authorizes a tenant, in certain circumstances, to withhold rent if they have made emergency repairs. Section 33 of the *Act* defines “emergency repairs”, in part, as urgent repairs that are made for the purpose of repairing major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to a rental unit, the electrical systems, or in prescribed circumstances, a rental unit or residential property.

I find that the repairs the Tenant allegedly made, which include repairing floors, removing mold, and installing interior doors, do not constitute an emergency repair. I therefore dismiss his claim to recover the cost of emergency repairs and find that he did not have authority to withhold rent as a result of those alleged repairs.

Regardless of whether or not the Landlord has previously entered the rental unit without proper authority, the Landlord is reminded of his obligation to comply with section 29(1) of the *Act* for the remainder of the tenancy, which reads:

A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

Regardless of whether or not the Landlord has previously turned off the water without proper notice, the Landlord is reminded of his obligation to comply with section 27(1) of the *Act* for the remainder of the tenancy, which reads:

A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

Conclusion

I grant the Landlord an Order of Possession that is effective on December 31, 2018. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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