



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JAMIE WHITTEY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, OLC, PSF, RP, FF

Preliminary matter

At the start of the conference call the Landlord's Counsel said that the Tenant's application did not have the right name of the Landlord on it; therefore the application is invalid. The Tenant said the name on the application is the Landlord's agent and is the only contact that he has had with the Landlord so he used that name. There was a discussion about adjourning the hearing so that this issue could be considered, but the Landlord's Counsel agreed to proceed with the hearing with the Landlord's agent being named on the Tenant's application.

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause, for compensation for loss or damage under the Act, regulations and tenancy agreement, for the Landlord to comply with the Act, regulations and tenancy agreement, for the Landlord to provide services and facilities, for repairs to the unit and property and to recover the filing fee.

Service of the hearing documents by the Tenant to the Landlord done by registered mail on December 11, 2018 in accordance with section 89 of the Act. The Landlord confirmed receiving the Tenant's application and hearing package.

Issues to be Decided

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Is the Tenant entitled to compensation for loss or damage?
3. Has the Landlord complied with the Act, regulations and tenancy agreement?
4. Has the Landlord provided services and facilities agreed to in the tenancy agreement?
5. Are there repairs to be completed to the rental unit?

Background and Evidence

This tenancy started in August 1, 2018 as a one year fixed term tenancy with an expiry date of July 31, 2019. Rent is \$2,575.00 per month payable on the first day of the month. The Tenant said he paid a security deposit of \$1,237.50 at the start of the tenancy.

The Landlord said the first reason why they issued a 1 Month Notice to End Tenancy for Cause is that the Tenant has been repeatedly late with the rent payments. The Landlord said the rent is due on the 1st of each month and the Tenant paid the rent on September 4, 2018, October 12, 2018 and November 17, 2018. Further the Landlord said the October and November rent cheques were NSF and the Landlord issued 10 Day Notices to End Tenancy for Unpaid Rent for both months. The Landlord's Counsel said the Landlord wants to end the Tenancy on the effective vacancy date January 31, 2019, which is on the One Month Notice to End Tenancy for Cause dated December 7, 2018

The Tenant said he was late with the rent for October and November but he thought he was on time for September. Both the Tenant's and Landlord's evidence package contained a rent receipt for September 4, 2018 in the amount of \$1,375.00. Further the Tenant explained that he did not have a key to his mail box so he could not accept his pay cheques in order to pay the rent. The Tenant said that the Landlord withheld the mail key and caused the rent payments to be late.

The Landlord said there was an issue with the mail box but it was resolved by changing the lock and providing a key to the Tenant in the middle of August. The Landlord said the Tenant had access to the mail box at the end of August and in September.

The Tenant continued to say that his car was broken into and his belongings were stolen. The Tenant said the belongings were worth \$5,000.00 and he believes the Landlord is responsible. The Tenant said the Landlord did not provide him with secure indoor parking and as a result he parked in the outside parking lot and the car was broken into, damaged and his belongings were stolen. The Tenant said he is requesting \$5,000.00 from the Landlord in damages.

The Landlord said the Tenant requested parking in the outside lot as his vehicle did not fit well into the inside parking space. The Landlord continued to say many other tenants park their cars in the outside parking lot and it is not the Landlord's responsibility for cars and belongings left in cars. The Landlord's Counsel said the tenancy agreement states the Landlord is not responsible for loss or stolen items of the tenants.

Analysis

Section 26 (1) of the Act says a tenant 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.

Policy guideline 38 says three late payments are the minimum number sufficient to justify a notice under these provisions.

I accept the Landlord's testimony and written evidence that the Tenant has been late with the rent for September 2018, October 2018 and November 2018. This is 3 late rent payments out of total number of 6 rent payments to date. The Landlord only has to prove one of the reasons on the 1 Month Notice to End Tenancy for Cause to be successful in ending the tenancy. Given that the Tenant does not dispute been late on these three occasions; I find the Tenant has not established grounds to cancel the 1 Month Notice to End Tenancy for Cause dated December 7, 2018. Consequently I dismiss the Tenant's application to cancel the 1 Month Notice to End Tenancy for Cause dated December 7, 2018 without leave to reapply. Pursuant to section 55 of the Act, I award the Landlord with an Order of Possession with an effective date of January 31, 2019 at 1:00 p.m.

With respect to the Tenant's application for the Landlord to comply with the Act, regulations and tenancy agreement, to provide services and facilities and for repairs to the rental unit, these items all relate to the tenancy if it was to continue. As the tenancy is ending on January 31, 2019 these items are no longer material. I dismiss the Tenant's claims for the Landlord to comply with the Act, regulations and tenancy agreement, to supply services and facilities and for repairs to the unit.

Further the Tenant's monetary claim is for a break in and theft in his car. For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

In this situation the Tenant is saying the Landlord is responsible for the car break in and loss of his belongings because the parking lot was not secure. The car break in is a criminal act. The Landlord is not solely responsible for the car break in. Therefore as this is a criminal matter and the Residential Tenancy Act only has jurisdiction in tenancy matters, the Residential Tenancy Act does not have jurisdiction over the car break in. This is not a tenancy matter. Consequently, I dismiss the Tenant's monetary claim of \$5,000.00 without leave to reapply. The Tenant may want to consult a lawyer for a course of action.

As the Tenant has not been successful in this matter I order the Tenant to bear the cost of the filing fee of \$100.00 that he has already paid.

Conclusion

An Order of Possession effective at 1:00 p.m. on January 31, 2019 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

The Tenant's application is dismissed without leave to reapply.

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: January 15, 2019

Dated of Corrections January 22,
2019

Residential Tenancy Branch