Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

The tenant seeks an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") under section 46 of the *Residential Tenancy Act* (the "Act").

The tenant applied for dispute resolution on April 10, 2019 and an arbitration hearing was held on May 24, 2019. The landlord, his wife, the tenant, and a witness (and assistant) for the tenant attended the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. No issues of service were raised by either party,

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred, but only evidence relevant to the issues of this application are considered.

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 tenant's application is dismissed and the landlord's notice to end tenancy complies with the Act.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began February 1, 2019. Monthly rent was $800.00 but was lowered to $600.00 for the months of February and March to compensate for heating costs in the winter. Rent reverted to $800.00 on April 1, 2019. A security deposit of $400.00 was

required. By way of oral agreement between the parties, the tenant was to have the BC Hydro account for the rental unit transferred into his name; until then, he was responsible for paying half of the hydro.

On February 6, 2019, the tenant paid the $600.00 rent and $200.00 towards the security deposit (referred to as the “damage deposit” in the landlord’s written submissions).

On March 22, the tenant paid $445.00 for March’s rent, and then he paid another $100.00 on March 28 toward that month’s rent (for a total of $545.00). By April 1, 2019, the landlord’s wife testified that it became apparent that the tenant would not be paying all the rent for March (he still owed $55.00) or the amount owing ($200.00) on the security deposit. So, the landlord decided to issue the Notice.

The Notice was signed by the landlord on April 2, 2019 and served on the tenant on April 2, 2019 by being posted on the tenant’s door. A witness (“B.W.”) was present at the time of service. The Notice, a copy of which was submitted into evidence, noted that rent in the amount of $1,055.00 and utilities in the amount of $245.00 were due on April 1, 2019.

Since the Notice was posted, the landlord testified that the tenant has not paid rent for April 2019 nor any rent for May 2019.

The tenant and his witness testified that they “paid $800, $200, and $100.” They did not specify on what dates these amounts were paid or for what (that is, rent, utilities, or for the security deposit). The tenant clarified that the $100.00, for which there was a receipt, was paid by a “Miranda” (one of his roommates); the tenant was unable to explain when this was paid and what it was for.

I asked the tenant whether he had paid rent for April 2019. He testified that he had not. I asked him if there was a reason why he had not paid rent. He answered, “because of discrimination” and because of “a hot water issue” involving a broken hot water tank. The tenant testified that the rental unit’s hot water tank broke down such that the tenant was unable to have a shower for approximately a week.

I asked the tenant whether he had paid rent for May 2019, to which he answered that he had not. I asked him why he had not paid the rent, for which he (and his witness) explained that they had “done [about] $500-worth of work” around the rental unit,

including removing “piles and piles of garbage” and about twenty hours worth of cleanup.

In their final submission the landlord and his wife testified that the hot water tank failure occurred on April 25, long after the rent was due. “The hot water tank has nothing to do with the rent,” said the landlord’s wife. She further stated that they sent a plumber to fix the tank. The plumber attended twice to repair the tank, but nobody answered the door. Finally, the landlord’s wife indicated that the piles and piles of garbage to which the tenant referred was the tenant’s garbage.

In his final submission the tenant and his witness referred to various receipts for the cost of replacing or repairing the hot water tank, but I note that no receipts for these items had been submitted into evidence.

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.

Where a tenant applies to dispute a 10 Day Notice to End Tenancy for Unpaid Rent, the onus is on the landlord to prove, on a balance of probabilities, that the tenant did not pay rent in accordance with the Act.

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.

Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if he paid rent within five days of service (which he did not). The Notice also explains that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution (which he did).

The landlord testified that the tenant did not pay rent when it was due on April 1, 2019 and has also not paid any rent for May 2019. The tenant testified that he has not paid rent for April and May 2019.

Did the tenant have a right under the Act to deduct all or some of the rent for April and May 2019?

Under the Act there are only four exceptions that permit a tenant to deduct some or all of the rent. These sections essentially act as legal defenses for a tenant facing eviction, or a monetary claim, for unpaid rent.

Section 43(5) of the Act states that, where a landlord collects a rent increase that does not comply with the Act (section 43(1)), the tenant may deduct the increase from rent, or otherwise recover the increase. And, under sections 65(1)(b) and (c), and section 72(2)(a) of the Act, a tenant may deduct an amount from rent when ordered by an arbitrator. Neither of these exceptions were raised as reasons by the tenant for not paying the rent.

Section 19 of the Act permits a tenant to deduct an overpayment from rent or otherwise recover the overpayment when a landlord requires, or collects, a security or pet damage deposit in excess of the Act.

In this case, the tenant provided a written submission that referenced confusion about what he paid and stated that he has overpaid the security deposit. However, the same written submission also includes a statement by the tenant in which he says that he "should only owe $500" and that he chose not to pay rent because of the landlord's failure to have a discussion with him about amounts owing.

Based on the testimony and lack of documentary evidence of the tenant, I conclude that the landlord neither required or collected a security deposit in excess of the Act. As such, the tenant was not permitted by this section of the Act to withhold rent.

Section 33(7) of the Act permits a tenant to deduct an amount from rent that the tenant expended on emergency repairs and where the landlord has failed to reimburse the tenant for those expenses.

"Emergency repairs" are defined 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 (i) major leaks in pipes or the roof, (ii) damaged or blocked water or sewer pipes or plumbing fixtures, (iii) the primary heating system, (iv) damaged or defective locks that give access to a rental unit, (v) the electrical systems, or (vi) in prescribed circumstances, a rental unit or residential property.

In this case, the tenant argued that he withheld rent (among other reasons) because of the hot water tank failing for a week. A hot water tank failure does not fall within the definition of an emergency repair under the Act. As such, even if the tenant had submitted a receipt for costs related to repairing the hot water tank, he would have not had a right under the Act to withhold the rent.

The tenant's reason for not paying the rent due to "discrimination" is, with respect, fully without merit. No evidence or submissions were provided by the tenant or his witness regarding how discrimination would form the basis for a legal right to not pay rent. The Act does not permit a tenant to withhold rent on the basis of discrimination, whatever the basis of such alleged discrimination might be.

Finally, the tenant's reason for not paying rent in May 2019 because of him doing $500-worth of work around the property is not a permitted exception under the Act to withhold all or some of the rent. Indeed, even if there had been a permitted deduction of $500.00 for such work (of which there is no such permission under the Act) would leave a balance of $300.00.

I note that the tenant and his witness frequently referred to various receipts for various items, but no receipts were submitted into evidence. The tenant and his witness referred to several amounts that had been paid (for example, "$800, $200, and $100"), but provided no explanation or documentary evidence as to what these amounts were for, or how they might prove that the tenant paid any of the rent.

I find the tenant's and his witness' explanation for why the tenant has not paid rent for April and May 2019 to be less-than-credible and nothing more than a last-ditch effort for not paying rent.

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. As such, I dismiss the tenant's application for an order cancelling the notice.

Section 55 (1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their application for dispute resolution 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.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must (1) be signed and dated by the landlord, (2) give the address of the rental unit, (3) state the effective date of the notice, (4) state the grounds for ending the tenancy, and (5) be in the approved form.

Having reviewed the Notice, I find the Notice issued by the landlord complies with the requirements set out in Section 52. Therefore, I grant the landlord an order of possession of the rental unit.

Conclusion

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

I grant the landlord an order of possession, which must be served on the tenant and is effective two (2) 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: May 24, 2019

Residential Tenancy Branch