



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, CNR

Introduction

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

- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord did not submit any documents into evidence. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Is the tenant entitled to an order that emergency repairs be made to the rental unit?
Is the tenant entitled to the cancellation of the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, month to month tenancy agreement starting December 1, 2017. Monthly rent is \$375.00, including utilities. There was no requirement for the tenant to pay a security deposit.

The landlord testified that prior to entering into the tenancy agreement, the tenant was camping on a river bank. The landlord testified that an acquaintance of his asked if he would rent the rental unit to the tenant, so the tenant would not need to live outdoors during the winter. The landlord agreed. He testified that it was his understanding that once the winter ended, the tenant would vacate the rental unit. The tenant did not dispute any of this.

The landlord testified that the rental unit was not intended for rental, as it needed significant renovations, and that he only agreed to rent the rental unit to save the tenant's life.

The landlord testified that for the entire duration of the tenancy, the tenant has only paid monthly rent twice.

The tenant agreed that he has not paid rent, except as stated by the landlord.

The tenant testified that the rental unit was significantly deficient and in need of repairs. He testified that the toilet does not work, and he needs to use a bucket to flush it. He testified that for six or eight months the sink leaked, which caused the bottom of the drain to "rot out", necessitating him to place a bucket under it to collect water. He testified that this caused mold to grow in the kitchen, which was negatively impacting his health. He testified that the hot water tank take six to eight hours to heat up.

On April 1, 2019, the landlord issued the Notice to the tenant by posting it on the door of the rental unit. The amount of rental arrears claimed was \$1,025.00 as of February 1, 2019. The effective date was April 15, 2019. The tenant confirmed receipt of the Notice.

The landlord testified that he is owed significantly more in arrears, but that he is only seeking the portion of rent representing his costs for utilities (which are included in the monthly rent) that he has incurred during the tenancy.

Analysis

Section 26(1) of the Act states:

Rules about payment and non-payment of rent

26 (1) 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.

There is no basis in the Act for a tenant to withhold rent from a landlord for a failure to make repairs. If repairs need to be done, the tenant can apply to the Residential Tenancy Branch to have the repairs made pursuant to section 32 or 33. It is not permissible for the tenant to withhold rent until the repairs are made, unless an arbitrator has made such an order. In this case, no such order exists.

As such, I find that the tenant had an obligation to pay monthly rent to the landlord. Based on the testimony of the parties, I find that, for the duration of the tenancy, the tenant only paid monthly rent twice. The tenancy, to date, has lasted 18 months. I find that the tenant is \$6,000.00 in arrears (16 x \$375.00).

Section 46(1) of the Act states:

Landlord's notice: non-payment of rent

46(1) A landlord may 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.

I find that at least \$1,025.00 in rental arrears was due to the landlord on the date he issued the Notice. I find that the tenant has not paid this amount.

Accordingly, I find that the Notice was validly issued. I therefore dismiss the tenant's application to cancel the Notice.

Section 55 of the Act states:

Order of possession for the landlord

55(1) 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

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the form of the Notice complies with section 52 of the Act.

As I have dismissed the tenant's application, and I have found that the Notice complies with section 52 of the Act, I find that the landlord is entitled to an order of possession effective two days from the date the landlord serves this order on the tenant.

As the landlord has not applied for a monetary order regarding the rental arrears, I decline to make one.

As the tenancy has ended, it is not necessary for me to consider the tenant's application that repairs be made.

Conclusion

I dismiss the tenants' application to cancel the Notice without leave to reapply.

I dismiss the tenants' application for emergency repairs without leave to reapply.

I grant an order of possession to the landlord effective two days after service of this order and this decision on the tenant. Should the tenant fail to comply with this order, it 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 *Residential Tenancy Act*.

Dated: May 10, 2019

Residential Tenancy Branch