



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, RP, RR, FFL, and OP

Introduction

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

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62; and,
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47.

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

- an Order of Possession for cause pursuant to section 55; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution and the tenant acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Preliminary Matter: Name Correction

The parties testified that landlord's name and tenant K.P.'s name were stated incorrectly. I herein amend the tenant's application to state to the correct names of the landlord and tenant K.P., which are stated on first page of this decision, pursuant to section 64(3)(c) of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Are the tenants entitled to an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62?

Are the tenants entitled to cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47?

Is the landlord entitled to an Order of Possession for cause pursuant to section 55?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenancy started on June 1, 2015. The current monthly rent is \$1,417.00 rent. The tenants paid the landlord a \$625.00 security deposit.

The tenants complained that there were multiple problems with the rental unit which the landlord did not repair. The tenants complained that the kitchen sink was "falling off the walls" and the toilet leaked. They also complained that the bathtub was soft and it had a foul odor. The tenants also complained that there was black mold and the heat did not work. The landlord testified that the heat did work and the rest of these problems either did not exist or they were minor issues.

The landlord testified that entered the rental unit in July 2019 to perform an inspection pursuant to a notice of entry. The landlord testified that tenant K.P. became very angry and she began to scream and curse at him during the inspection. The landlord testified that tenant L.P. then grabbed the landlord's arms and shoved him out of the rental unit. The landlord testified that he called the police and the police responded.

Tenant K.P. testified that tenant L.P. did not grab the landlord or shove him. Rather, she testified that the landlord was trying to enter a bedroom where their child was sleeping and tenant L.P. put his hand on the landlord's shoulder, told him that he could not go in there and turned the landlord towards the living room.

The landlord also testified that the tenants made excessive noise which resulted in a noise complaint from the city. The landlord testified that the city warned him that he would be fined if noise violations occurred again.

The landlord also testified that the tenants stored possessions in the yard which also resulted in a warning from the city. The landlord received a letter which stated that he would be charged for cleanup expenses if he did not clean the yard. The tenant testified that the mess in the yard was from other tenants on the property.

The landlords also testified that the tenants were using excessive electricity. The landlord testified that the tenants shared electricity with tenants in the property and excessive use created a burden for other tenants.

The landlord issued the One Month Notice on July 17, 2019 with a stated move out date of August 31, 2019. The landlord testified that the notice was served in person on the tenants on July 17, 2019. The landlord provided a witnessed proof of service corroborating service of the One Month Notice on July 17, 2019.

The landlord issued a One Month Notice checked the following as grounds for the Notice:

- The tenant or a person permitted on the property by the tenant has
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - Put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property.

- Adversely affect the quiet enjoyment, security, safety or physical well-being of the other occupant
- Jeopardize a lawful right or interest of another occupant or the landlord.
- Tenant has not done required repairs of damage to the unit/site.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Analysis

Both the landlord and the tenant have pursued claims against each other. I will address each parties' claims separately.

i. Landlord's request for an order of possession

Pursuant to *Residential Tenancy Branch Rules of Procedure ("RTB Rules")*, Rule 6.6 states that the applicant, in this case the landlord, has the onus of proof to prove their case on a balance of probabilities. This means that RTB Rule 6.6 requires the landlord to prove that, more likely than not, the facts occurred as claimed in order to prevail in his claim.

The landlord claimed that he was assaulted by tenant L.P. The landlord claims that the tenant L.P. grabbed his arms and push him out the rental unit. Tenant K.P. testified the landlord placed his hand on the landlord's shoulder and he asked him to leave. Both parties agreed that the landlord called the police.

Although the parties have provided sharply conflicting testimony regarding this incident, I find the landlord's testimony to be more credible since his testimony is more consistent with the undisputed circumstances. Specifically, the landlord's need to summon the police is consistent with the landlord's allegation that he was grabbed and shoved out the rental unit. On the other hand, tenant K.P.'s testimony was not consistent with the need to call the police. As such, I find that tenant K.P.'s testimony is not as credible as the landlord's testimony and I find that, on the balance of probabilities, tenant L.P. did physically grab the landlord and push him out of the rental unit.

Furthermore, I find that the action of grabbing the landlord and shoving him out of the rental unit is sufficient ground to end a tenancy as conduct which "seriously jeopardized the health or safety or lawful right of another occupant or the landlord" pursuant to

section 47(1)(d)(ii) of the *Act*. Accordingly, I dismiss the tenants' application to cancel the One Month Notice.

Section 55 of the *Act* states that when a tenant's application to cancel a notice to end tenancy for cause is dismissed, I must grant the landlord an order of possession if the landlord has issued a notice to end tenancy in compliance with the *Act*. I find the form and content of the One Month Notice does comply with section 52 of the *Act*. Accordingly, I find the landlord is entitled to an order of possession effective at 1:00 p.m. on August 31, 2019.

Since the landlord has succeeded in his application to end the tenancy, I grant that the landlord reimbursement of the filing fee pursuant to section 72 of the *Act*. To satisfy this award, the landlord may deduct the sum of \$100.00 from the tenants' security deposit pursuant to section 72 of the *Act*.

ii. *Tenants' request for rent reduction and repairs*

The tenants have requested an order for repairs to the rental unit and monetary compensation for a reduction of from loss of use of the rental unit. Since this tenancy is not going to continue, I find that the tenants' request for repairs is moot and I dismiss this request pursuant to section 62(4) of the *Act*.

In regards to the tenants' request for a rent reduction, the tenants, as the applicants, have the onus of proving, that, more likely than not, the facts occurred as claimed in order to prevail in their claim pursuant to *RTB Rule 6.6*.

Residential Tenancy Policy Guidelines No. 1 describes the responsibilities that tenants and landlords have in regards to maintaining the rental unit. *Residential Tenancy Policy Guidelines* No. 1 states that:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

Furthermore, *Residential Tenancy Policy Guidelines* No. 1 states that cleaning minor mold is the responsibility of the tenants. The tenants have not presented any evidence to establish that there were more than minor levels mold in the property. As such, I find that the tenants have failed to establish that the landlord is responsible for remediating mold in the rental unit.

Similarly, the tenant requested compensation for an odor from the bathtub. However, *Residential Tenancy Policy Guidelines* No. 1 states that the tenants are responsible for maintaining "reasonable health, cleanliness and sanitary standards" in the rental unit. The tenants did not provide sufficient evidence to establish that an odor from the bathtub was caused by landlord neglect rather than the tenants' failure to maintain sanitary standards in the rental unit.

The tenant also testified that the heat was not functioning in the rental unit. However, the landlord testified that the heat was functioning properly. Without any evidence corroborating the tenants' contention, I find that the landlord's testimony that the heat was working is equally as likely as the tenant's testimony that the heat was not working. As such, I find that the tenants have not provided sufficient evidence to satisfy their onus of proving that the heat was not working.

In addition, the tenants testified that the kitchen sink, toilet and the bathtub needed repairs. However, there was no evidence presented to establish that tenants' use of the kitchen sink, toilet or bathtub were adversely affected or restricted.

In addition, the tenants did not provide any photographs corroborating their claims of loss of use of the property.

For the forgoing reasons, I find that tenants have not provided sufficient evidence to prove their claim for a rent reduction. Accordingly, I dismiss the tenants' claim for a rent reduction.

Conclusion

I find the landlord is entitled to an order of possession effective at **1:00 p.m. on August 31, 2019**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant that the landlord reimbursement of the filing fee pursuant to section 72 of the *Act*. To satisfy this award, the landlord may deduct the sum of \$100.00 from the tenants' security deposit pursuant to section 72 of the *Act*.

The tenants' application for a monetary order is dismissed.

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: August 16, 2019

Residential Tenancy Branch