



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEE & WU HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RR
 OPR, MNDL-S, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on March 6, 2020. The Tenant applied to cancel a One-Month Notice to End Tenancy for Cause (the Notice) dated January 31, 2020, and to request rent reduction for repairs, services or facilities agreed upon but not provided.

The Landlord’s Application for Dispute Resolution was made on March 6, 2020. The Landlord applied to enforce a One-Month Notice to End Tenancy for Cause (the “Notice”) dated January 31, 2020, for a monetary order for damages and to recover their filing fee.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters – Related Issues

I have reviewed both of the applications that I have before me, and I note that they have both applied to either cancel or enforce a Notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the request to the Notice. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply, the Tenant's claims for a rent reduction for repairs, services or facilities agreed upon but not provided. I am also dismissing with leave to reapply the Landlord's claim for a monetary order for damages or compensation under the Act.

I will proceed with this hearing on the Tenant's claim to cancel the Notice, and on the Landlord's claim to enforce the notice, and to recover the filing fee for this hearing.

Preliminary Matters – Arbitrators Questions

The Residential Tenancy Branch Rules of procedure define the arbitrator's role in a hearing as follows:

6.1 Arbitrator's role

The arbitrator will conduct the dispute resolution process in accordance with the Act, the Rules of Procedure and principles of fairness."

Throughout these proceedings, the Landlord was not prepared to answer and expressed frustration at this Arbitrator's questions related to the Landlord's claim and evidence. Section 2.3 of the Residential Tenancy Branches Rules of Procedure states the following:

7.23 Questions by the arbitrator

The arbitrator may ask questions of a party or witness if necessary:

- to determine the relevancy or sufficiency of evidence;

- to assess the credibility of a party or a witness; or
- to otherwise assist the arbitrator in reaching a decision.

In order to provide the Landlord with a fair and equal opportunity to present their claim, I allowed the Landlord time to formulate their answers, look up dates and prompted the Landlord to speak to the relevant parts of their application.

However, the Landlord remained unprepared or unable to speak to specific details of the history of this tenancy, of their application, and the current status of this rental property throughout these proceedings.

Issues to be Decided

- Should the Notice dated January 31, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The Tenant testified that the tenancy began on May 11, 2017, and that the current rent is \$1,918.00 per month to be paid by the first day of each month. The Tenant testified that the Landlord is holding a \$900.00 security deposit for this tenancy. When asked, the Landlord was unable to testify to the history of this tenancy and referred this Arbitrator to the tenancy agreement. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to End tenancy to the Tenant on January 31, 2020, by registered mail. The Notice indicated that the Tenant was required to vacate the rental unit on March 31, 2020. The reasons checked off by the Landlord within the Notice are as follows:

- *Tenant or a person permitted on the property by the Tenant has:*
 - *Put the Landlord's property at significant risk*

The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it.

The Tenant testified that they did not receive the Landlord's registered mailed Notice as the mailboxes for the delivery of mail, for the entire rental property were damaged, and Canada Post would no longer leave mail in the boxes as they are unsecured. The Tenant testified that they did not know that the Landlord was unaware of the broken mailboxes until the Landlord contacted them to inquire if they had received the Notice to end tenancy.

The Landlord confirmed that they had contacted the Tenant on February 24, 2020, to follow up on the Notice and that they were advised at that time, by the Tenant, that there was a problem with the mailboxes for the rental property. The Landlord testified that the tenant provided them with an alternate mailing address and requested that the Landlord serve them with the Notice by email.

When asked by this Arbitrator, if the Landlord could confirm the condition of the mailboxes at the rental property, the Landlord could not confirm if, the mailboxes at the rental property were damaged. The Landlord testified that they believed the mailboxes were fine.

The Landlord argued that the mailed Notice was deemed received five days after it had been mailed and that the Tenant had missed the deadline for disputing the Notice.

The Tenant testified that he received the Notice on February 24, 2020, by email and that they had filed to dispute the Notice on March 6, 2020.

The Landlord testified that they were ending the tenancy due to water damage caused to the rental unit due to neglect of the Tenant. The Landlord testified that the Tenant and neglected to report a water leak in the rental unit to the Landlord in a timely manner and that the unreported water leak put the Landlord's property at significant risk.

The Landlord testified that a plumber attended the rental unit on January 13, 2020, due to a report of a water leak coming from the rental property. This Arbitrator asked the Landlord when the water leak that the plumber was responding to, had been reported to the Landlord. The Landlord testified, "probably a couple of days before the date of the invoice." This Arbitrator asked the Landlord to be more specific, regarding the date of the report of the water leak and who had made the report, the Landlord was provided with additional time to answer. The Landlord was unable to provide a specific date of the reported water leak and testified that they believed it was the concierge at the rental property that made the report to the Landlord.

The Landlord claimed that the Tenant had prior knowledge of the water leak before the concierge had reported it to the Landlord that they failed to advise the Landlord as required. This Arbitrator asked the Landlord to explain how they knew that the Tenant had prior knowledge of the water leak and neglected to report. The Landlord responded that the water leak had caused such significant damage to the property that the Tenant ought to have known it was happening and would have easily seen the water damage had they looked.

The Tenant testified that they first learned of the water leak, when the Landlord had called them on December 30, 2019. The Tenant testified that during that call, the Landlord had advised them that the concierge at the rental property had called them and reported a water leak coming from the rental property. The Tenant testified that the Landlord advised them that they had been contacted and that the concierge had wanted to inspect the pipes in the rental unit, which the Tenant had agreed to let the concierge in for an inspection.

The Tenant confirmed that the concierge attended the rental unit that same day and that they understood that the concierge had reported a small water leak back to the Landlord. The Tenant testified that the Landlord called them later that day and advised the Tenant that they would keep an eye on it for a few days and then decide what to do about the water leak. The tenant submitted a picture of a bucket they were keeping under the water leak into documentary evidence.

Both parties agreed that the Landlord's plumber attended the rental unit on February 13, 2020, to repair the water leak. The Landlord submitted a copy of the invoice for the plumber into documentary evidence.

Both parties also agreed that during the repair, the plumber had noted that the fridge in the rental unit was not working properly.

The Landlord testified that the plumber had indicated on the invoice for the repair work, that the water leak had been caused by the Tenant loosening the pipes. This Arbitrator asked the Landlord how the plumber had known that it was the Tenant who had loosened the pipes. The Landlord testified that "it must have been him, as he lives there." Additionally, the Landlord testified that the report of the malfunction fridge, by the plumber, shows a pattern of the Tenant not reporting problems to the Landlord and not taking care of the rental property as required.

The Tenant testified that they had not loosened the pipes and that it was a malfunctioning and old garburator that was leaking water and required repair. The tenant submitted a copy of a plumbers second opinion inspection report, of the water leak, they had completed into documentary evidence.

The Tenant also testified that they had not reported a problem with the fridge to the Landlord as they had no problem with the fridge. The Tenant agreed that the fridge was old and loud but that it worked fine for their purposes.

Additionally, the Tenant testified that the Landlord had been in to conduct an inspect the rental unit in October 2019 and had found no water leaks from pipes or the fridge at that time. The tenant submitted the email notification from the Landlord for the entry for inspection into documentary evidence.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I must first acknowledge the Landlord's argument that the Tenant had submitted their application to dispute the Notice outside of the required 10-day time limit. After hearing the testimony of both these parties in regard to the service of the Notice and the current condition of the mailboxes on the rental property, I find that the Tenant offered the creditable account of the service of the Notice and the broken mailboxes at the rental property.

Therefore, I accept the Tenant's testimony that they received the Notice to end tenancy on February 24, 2020, the date the Tenant and the Landlord agreed that the Notice had been emailed to the Tenant. Pursuant to section 47(4) the *Act*, the Tenant had ten days to dispute the Notice, after it was received. I find the Tenant had until March 5, 2020, to file their application to dispute the Notice. I have reviewed the Tenant's application, and I find that the Tenant filed their application on March 6, 2020, one day outside of the statutory time limit.

However, I must acknowledge the current state of emergency in British Columbia and the evolution of the COVID-19 pandemic in this province. I recognize that the pandemic affect on our community, writ large, long before the official state of emergency had been declared on March 18, 2020. In the light of that fact, and to ensure procedural fairness, I

find it acceptable to allow the Tenant one additional day to file their application to dispute the Notice. Therefore, I find that the Tenant has filed their application on time, and I will continue in this decision on the matter that I before me, the Notice to end tenancy.

The Landlord indicated that the reason for the Notice was that the Tenant had put the Landlord's property at significant risk, and included the following written details:

"Tennat S.V. was aware of the kitchen drain pipe leaking and fridge freezer leaking for such a long time but no attempt to notify the Landlord nor his agent. It caused water leaking to downstairs unit and the fridge rusted at the bottom and it must be replaced"

I accept the sworn testimony of both parties that there had been a water leak in the rental unit that had caused damage to the rental unit and the unit below, during this tenancy. Section 32(3) of the *Act* stated the following:

Landlord and tenant obligations to repair and maintain

32 (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

I heard contradictory testimony from both parties regarding if the Tenant had prior knowledge of the water leak. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Landlord.

After careful review of the Landlord's documentary evidence, I find that there is no evidence before me to show that the Tenant had any prior knowledge of a water leak in the rental unit and had failed to report to the Landlord.

Throughout these proceedings, the Tenant was able to clearly testify to dates that the parties to this dispute had been advised of a water leak and who had reported the water leak. However, the Landlord was unable to testify to dates and was only able to

reference the date shown on the plumber's invoice, as a fact they knew, regarding the water leak, during these proceedings.

Overall, I find that the Tenant provided a credible account of the history of this water leak and the dates of their and Landlord's knowledge of the water leak. I also accept the Tenant's testimony that the water leak had been reported to the Landlord by the concierge for the rental property on December 30, 2019, almost two weeks before the plumber attends the rental property to make repairs.

Additionally, during these proceedings, the Landlord referenced the findings for their plumber and claimed that it was the Tenant who had caused the water leak by loosening the pipes. I have reviewed the plumber's invoice, submitted into evidence by the Landlord, which states the following:

"Leak inspection for kitchen sink and pipe fridge
Existing pipe been loosen at 2 different joint that causes the leak, both joints
been loosen up by tenant, as a result water leak thru cabinet and downward to
next floor
Remove damaged Gaburator with new kitchen sink basket and new pipe
Cap off electrical wire and rerun drainage pipe"

[Reproduced as written]

Where I can accept, at face value, this plumber's account that the leak had been caused by the pipe being loosened at two points, I am not able to accept the plumber's personal opinion that it was the Tenant who had loosen the pipes. I also do not accept the Landlord's explanation as to how the plumber had known that it was the Tenant who had loosened the pipes. Therefore, I find the Landlord's plumber invoice to be of weak evidentiary value.

I have also reviewed the Tenant's documentary evidence, in particular the invoice they submitted from their plumber, who inspected the water leak. The inspection report from the Tenant's plumber states the following:

"Inspected the area and location of the kitchen leak, compared dated videos and pictures with current condition. Without doubt the leak was caused by the outdated garburator, rusty upper part and cracked seal. Replacement was inevitable at this stage. No other signs of leaks or faulty pipes found."

[Reproduced as written]

I noted that both the Landlord's invoice and the Tenant's inspection report indicate that the garburator of the rental unit required replacement. I find that on a balance of probabilities that the water leak in the rental unit was caused by an ageing and faulty garburator, and not the Tenant.

The Landlord also claimed that the Tenant neglected to report a problem with the refrigerator in the rental unit. I find that the parties, in this case, offered conflicting verbal testimony regarding the need for repairs or replacement of the fridge in the rental unit. As stated earlier in my decision, where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, and that is the Landlord in this case.

I have reviewed all of the evidence submitted by the Landlord, and I find that there is no evidence before me to show that the Tenant had any prior knowledge of a problem with the fridge in the rental unit and had failed to report to the Landlord.

Overall, I find there is an absence of physical evidence from the Landlord that would outweigh the contradictory verbal testimony of the parties and the Tenant's physical evidence, in this case. Therefore, I find the Landlord has failed to provide evidence sufficient to terminate the tenancy for the reason given on the Notice they issued.

Therefore, I grant the Tenant's application to cancel the Notice dated January 31, 2020, and I find the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been unsuccessful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant the Tenant's application, and I find the Notice dated January 31, 2020, of no effect under the *Act*.

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: April 22, 2020

Residential Tenancy Branch