Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, PSF, RP, MNDCT

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 32;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- order that the landlord make repairs to the rental unit pursuant to section 32;
- an order that the landlord provide services or facilities required by law pursuant to section 65; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $600 pursuant to section 67.

The tenant attended the hearing. The landlord attended the hearing and was assisted by her son ("**VL**"), who also acted as translator. All were 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. The tenant did not submit any documentary evidence supporting his application. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Neither party provided a copy of the Notice into evidence. By agreement of the parties, the landlord uploaded a copy of the Notice (and a proof of service form) to the RTB evidence portal during the hearing, which I accepted into evidence.

Preliminary Issue – Address of Rental Unit

The rental unit is a self-contained suite located in a single-detached house. This house has three separate living areas. Two suites on the ground floor, which are rented out and a suite on the upper floor occupied by the landlord and her son. All three suites share the same civic address, and mail to all three suites is delivered to the landlord's mailbox. The landlord distributes the occupants of the ground floor suites' mail to them.

On his application, the tenant listed the address of the rental unit as the civic address. The landlord confirmed that this is the mailing address of the rental unit (and all other

units in the house). However, on the application the tenant listed his address for service as "[civic mailing address] – right side suite". He listed the landlord's address as the civic address of the house.

In order to distinguish between the different units in the house, and in order to allow an order of possession issued to have any effect, it is appropriate to amend the application to list rental unit's address as "[civic mailing address] – right side suite". If I do not make such an amendment, any order of possession issued would likely not be enforceable, as it would require the tenant to provide vacant possession of the entire house to the landlord (something he is incapable of doing).

Preliminary Issue – Severing the Tenant's Application

At the outset of the hearing, I advised the parties that I would attempt to hear submissions on all issues in the allotted time, but if this could not be done, I would dismiss with leave to reapply the portions of the tenant's application relating to repairs and provision of services, pursuant to Rule of Procedure 2.3 (which requires that claims made in an application be related to each other), and only adjudicate the validity of the Notice and the issue of the tenant's claim for monetary compensation (which is mostly related to payment of rent issue and the validity of the Notice).

Despite going fifteen minutes over the allotted time, the parties did not have enough time to make submissions on the tenant's application for repairs or application for the provision of services or facilities. Accordingly, I dismiss these portions of the tenant's application, with leave to reapply.

Issues to be Decided

Is the tenant entitled to:

1) an order cancelling the Notice; and
2) a monetary order of $600?

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 an oral tenancy agreement starting June 1, 2018. Monthly rent is $800 and is payable on the first of each month. The tenant testified that he paid the landlord a security deposit of $450 and that the landlord still retains this deposit. The landlord testified that the tenant paid a security deposit of $400, plus a further deposit of $50 to be able to store his belongings on the residential property, outside of the rental unit. The tenant does not pay any amount in addition to his monthly rent for storage.

The tenant testified that he was negatively impacted by the COVID-19 pandemic. He struggled to make his monthly rent payments, and the landlord agreed to temporarily reduce his rent by $300 for April, May, June, July, and August 2020. In August 2020, the landlord advised the tenant that she would not reduce his rent for any further months. The tenant attempted to secure a lesser reduction ($200), but the landlord refused. He testified that the landlord agreed that he would not be required to pay his rent on the first of each month, but rather, whenever he was able during each month it was due. VL denied that the landlord agreed to accept rent after the first of the month but testified that the landlord was “flexible” with regards to timing of payments. He did not elaborate of this point.

The tenant only paid $600 of the monthly rent owed in September 2020. He paid no part of the rent owed in October 2020. On October 11, 2020, the landlord served the tenant the Notice by posting it on the door of the rental unit. It indicated that the tenant owed $1,000 in arrears as of October 1, 2020.

The tenant did not deny that the arrears were owed as indicated on the Notice. Rather, the tenant argued that the landlord refused to sign documents which would have allowed him to obtain financial assistance from a provincial rent assistance program.

The tenant testified that he qualified to receive $550 per month in rent assistance but that he was unable to receive this amount because the landlord did not provide him with her signature. He testified that when he first brought the issue up with the landlord in September 2020, the landlord became very angry with him. Despite this, he brought the issue up with the landlord again in October 2020 but testified that he was met the same refusal and anger from the landlord.

The tenant did not provide any documentary evidence which supported this testimony. I am unsure how he calculated that he qualified for $550 per month in rent assistance, or what document specifically he required the landlord to sign.

VL testified that the tenant never gave the landlord anything to sign. He testified that the tenant brought the issue of rent assistance up with the landlord, but the landlord did not fully understand the program, what it required of her, and that, without any documents for her to have translated or for her to review, she was resistant to the program. VL denied that the landlord refused to provide the tenant with signature.

VL testified that, in preparation for this hearing, he went to the BC rent assistance webpage to see what an application for rent assistance entailed. He testified that a signature from a landlord was not required in order to make an application to receive rent assistance. He did not provide any documents corroborating this testimony.

VL argued that notwithstanding the landlord’s initial resistance to the rental assistance program the tenant could still have applied for rent assistance, obtained it, and paid his rent as it was due.

Upon hearing VL's testimony, the tenant resiled from his earlier assertion that he required a signature from the landlord to make the application, but rather clarified that he required the landlord's cooperation to make the application, and after having been met with the landlord's resistance to it he did not see any value in pursuing the application further.

The bulk of the tenant's monetary claim is also rooted in the alleged refusal of the landlord to cooperate with his rent assistance application. The tenant claims $550 in compensation representing the rent assistance he would have received in September 2020 but for the landlord's refusal to cooperate.

The tenant also claims for the return of $50 of the security deposit, representing the portion of the security deposit he says is over the statutory limit of an amount equal to half a month's rent as set out in section 19 of the Act.

As stated above, the landlord denies that the security deposit is more than half a month's rent. She argues that the additional $50 is a separate deposit for use of other parts of the residential property.

Analysis

1. Validity of the Notice

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> 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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlord bears the onus to prove that the Notice was issued validly, and that the tenant did not pay the rent that was owed.

Based on the testimony of both parties, I find that the tenant owed $1,000 in rental arrears as of the October 1, 2020.

Having proven this, the onus now switches to the tenant to prove, on a balance of probabilities, that his allegations are true. He must prove that:

1) the landlord's improper actions prevented him from obtaining rent assistance;
2) the amount of rent assistance he would have received but for the landlord's actions would have been sufficient to cover the rental arrears; and
3) this is a valid reason for not paying the monthly rent.

I must first note that section 26 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.

As such, I am not certain that, even if the tenant can establish the first two points set out above, the tenant is excused from paying a portion of the monthly rent or that the tenancy may not be ended for his non-payment of rent.

In any event, it is not necessary for me to examine this point in any more detail, as, based on the evidence provided at the hearing, I find that the tenant has failed to prove either of the first two points.

The tenant has provided no documentary evidence corroborating his testimony that the either the landlord must have provided a signature so that he could receive rent assistance, or indeed that her cooperation was necessary in order for him to make an application for rent assistance. Such corroboration should have been easily obtainable (an application form, screenshot of an FAQ section of the rental assistance programs webpage, or statement from an employee of the rental assistance program, for example).

I note that VL did not provide any corroborating documentation of his assertion that the landlord's signature was not required in order for the tenant to make an application for rent assistance. However, the tenant bears the onus to prove that the landlord's signature or cooperation is required; the landlord does not bear the onus to prove that they is not required. In any event, I am inclined to accept the landlord's testimony over that of the tenant's as it matches my understanding of the application process for the BC Rental Assistance Program.

Additionally, even if I accepted that the landlord's signature or cooperation is required, and that the landlord improperly withheld it (which I do not), the tenant has not provided any corroboration for his assertion that he would have received $550 in rental assistance. Again, such documentary corroboration should have been readily available. I find that he has failed to discharge his evidentiary burden to prove this point as well.

Accordingly, I decline to find that the tenant failed to pay rent as the result of the landlord acting improperly or refusing to cooperate with his rent assistance application.

Accordingly, I find dismiss the tenant's application to cancel the Notice.

Section 55 of the Act states:

> 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 Notice complies with section 52. Accordingly, I grant the landlord an order of possession against the tenant effective five days after service of this order by the landlord on the tenant.

2. Monetary Order

a. Loss of Rental Assistance

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.
>
> (the "**Four-Part Test**")

For the reasons set out above, I find that the tenant has failed to prove that the landlord has failed to comply with the Act, regulation, or tenancy agreement by withholding or refusing to cooperate with his rent assistance application. I do not find that the landlord

refused to cooperate or that that, if she did, her cooperation was necessary for the tenant to be able to make an application for rent assistance.

As such, the tenant had failed the first part of the Four-Part Test.

Additionally, I note that the I am unsure that the tenant has suffered any actual loss as a result of the landlord's alleged misconduct. Had the landlord cooperated with the tenant's application for rent assistance, the tenant would not been entitled to retain the funds provided to him by the rent assistance program. Rather, he would have been required to pay these funds to the landlord as part of his monthly rent payments. As such, this portion of the tenant's application is likely more properly characterized as an alleged failure of the landlord to minimize their loss (that is, part four of the Four-Part Test).

b. Overpayment of Deposit

Section 1 of the Act states:

> "security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:
>
> (a) post-dated cheques for rent;
>
> (b) a pet damage deposit;
>
> (c) a fee prescribed under section 97 (2) (k) *[regulations in relation to fees]*;

Sections 6 and 7 of the *Residential Tenancy Regulation* (the "**Regulation**") set out the permissible fees (both refundable and non-refundable) which a landlord may charge. Neither of these include a refundable fee for permission to store items on the residential property outside of the rental unit. I note that section 7(1)(g) of the Regulation permits a *non-refundable* fee "for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement". This section does not apply to the current situation, as the $50 deposit alleged by the landlord is refundable and as it was required at the outset of the tenancy which indicates that the ability for the tenant to store items on the residential property outside of the rental unit was provided for under the tenancy agreement.

As such, I find that the tenant was required to pay a security deposit of $450 at the start of the tenancy.

Section 19 of the Act states:

> **Limits on amount of deposits**

> **19**(1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
>
> (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Monthly rent is $800. As such, the landlord breached the Act by requiring a $450 security deposit from the tenant. In accordance with section 19(2) of the Act, the tenant may deduct $50 from amount of rental arrears he currently owes the landlord.

Conclusion

I dismiss the tenant's claim for $550 due to the landlord preventing him from receiving rent assistance, without leave to reapply.

I grant the tenant's claim for $50 due to the landlord requiring a security deposit in excess of half a month's rent. The tenant may deduct $50 from the amount of arrears he currently owes the landlord.

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

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within five days of being served with a copy of this decision and attached order(s) by the landlord.

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 12, 2021

Residential Tenancy Branch