



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC-MT, MNDCT, RP, PSF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on December 2, 2020 for:

1. An Order cancelling two notices to end tenancy - Section 46 and 47;
2. An Order for more time to cancel a notice to end tenancy - Section 66;
3. A Monetary Order for compensation - Section 67;
4. An Order for the Landlord to provide services or facilities required by law - Section 65; and
5. An Order for repairs - Section 32.

The Landlord applied on November 12, 2020 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for damages to the unit - Section 67;
4. An Order to retain the security deposit - section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Parties agree that only Tenant SV is named as a tenant on the tenancy agreement. As such any monetary orders will only name this Tenant.

The Parties agree that the Tenant has not moved out of the unit. As the tenancy has not yet ended, I find that the Tenant still has opportunity to ensure that the unit is left reasonably clean and undamaged except for reasonable wear. I therefore dismiss the Landlord's claim for costs for damage and retention of the security deposit with leave to reapply. Leave to reapply is not an extension of any limitation date.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. The Tenant submits that its claim for compensation is in relation to a claim for monies owed to the Tenant by the Landlord. As this claim is not related to whether or not the tenancy will end, I dismiss this claim with leave to reapply. Leave to reapply is not an extension of any limitation date.

During the hearing the Parties reached an agreement on ending the tenancy as follows:

The Parties mutually agree as follows:

- 1. The tenancy will end no later than 1:00 p.m. on April 30, 2021;**
- 2. The Landlord will ensure that the roads leading to the driveway are cleared to the driveway as early as possible and by no later than noon on April 30, 2021;**
- 3. If the Tenant moves out earlier than April 30, 2021, the Tenant will give the Landlord 3 to 5 days notice and the Landlord will ensure that the roads leading to the driveway are cleared to the driveway as early as possible and by no later than noon on the date the Tenant moves out;**
- 4. These terms comprise the full and final settlement of all aspects of the dispute over the end of the tenancy for both Parties.**

Section 63 provides that if the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or order.

Given the mutual agreement reached during the Hearing, I find that the Parties have settled that part of their dispute as recorded above. In order to give effect to this agreement I grant the Landlord an order of possession effective 1:00 p.m. April 30, 2021.

Remaining Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent?

Is the Tenant entitled to repairs to the unit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on June 1, 2019. Rent of \$2,000.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,000.00 as a security deposit. The Tenant failed to pay rent for November 2020, December 202, January 2021, and February 2021 in the amount of \$8,000.00. The Tenant informed the Landlord that they have had no heat from the furnace as late as November 21, 2020 and the Landlord has not made any repairs to the furnace. The Tenants informed the Landlord that they have not had water to the unit since December 11, 2020 and the Landlord has not made any repairs to the water line.

The Landlord agrees to have the furnace repaired by a qualified gas fitter to ensure heat delivery from the furnace no later than March 9, 2021. The Landlord agrees to inspect the water line no later than March 8, 2021 and will make any repairs necessary to ensure the delivery of water to the unit as soon as possible after the inspection.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations, or the tenancy agreement. Based on the agreed facts that the Tenant owes

rent of **\$8,000.00** I find that the Landlord has substantiated its claim for unpaid rent and that the Landlord is therefore entitled to this sum.

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character, and location of the rental unit, makes it suitable for occupation by a tenant.

Given the undisputed facts that the Landlord was informed of the lack of essential water and heat delivery to the unit I find that the Landlord has breached the Act in failing to provide suitable occupation for the Tenant and by its failure to remedy the matters after being informed of the loss of heat and water. As the Landlord has agreed to make repairs to the furnace and water line, I decline to make any order for repairs. Should the Landlord fail to act as agreed, the Tenant has leave to reapply for compensation from the time the heat and water was not available until they are remedied or to the end of the tenancy, whichever is first. As the Landlord has breached the Act, I decline to award the Landlord with recovery of its filing fee, and I dismiss this claim.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on April 30, 2021. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the Landlord an order under Section 67 of the Act for **\$8,000.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: February 25, 2021

Residential Tenancy Branch