Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, RR, CNL-4M

Introduction

The tenants applied to cancel various notices to end tenancy, an order for the reduction in rent, and for a monetary order for the cost of the filing fee, pursuant to sections 46, 49, 65, and 72, respectively, of the *Residential Tenancy Act* ("Act").

All parties attended the first hearing on March 29, 2021. Only the tenants attended the second hearing on April 20, 2021, which began at 1:30 PM and ended at 1:46 PM.

This matter was first adjourned from the first hearing for various reasons as explained in my Interim Decision of March 29, 2021.

Based on the evidence before me, including a copy of a Canada Post registered mail receipt and tracking number, and further based on delivery confirmation information on the Canada Post website, I find that the landlord's lawyer (to whom the landlord at the first hearing requested all documentation and evidence be sent) accepted and signed for the tenant's package on April 14, 2021. In addition, the tenants testified that they had some conversation with the landlord just last Saturday where the landlord appeared to try and bridge a gap between the parties. This interaction was apparently the first time that the parties had actually spoken with one another. In summary, I find that the landlord, through his lawyer, was served in accordance with the Act and that the landlord or his lawyer were fully aware of the hearing on April 20, 2021.

Issues

1. Are the tenants entitled to an order cancelling the notices to end tenancy?
2. Are the tenants entitled to a rent reduction (by way of compensation)?
3. Are the tenants entitled to recovery of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on July 1, 2017. Monthly rent was $1,500.00. The tenants did not pay a security or pet damage deposit. The tenants testified that they ended up vacating the rental unit at the end of March 2021 and have no intention of returning. They paid rent up to the end of March 2021.

Based on this oral evidence, I conclude as a preliminary finding of fact that the tenancy ended on March 31, 2021. As such, I need not consider the *10 Day Notice to End Tenancy for Unpaid Rent* or the *Four Months' Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of a Rental Unit*, as these have been essentially rendered moot by the tenants' vacating of the property. (As a purely technical matter, the notices will be cancelled as initially requested in the tenants' application.)

In respect of the tenants' claim for a rent reduction, they testified that this claim is because they were without hot water for half of February 2021 and all of March 2021. In addition, they were without power for a portion of this time. Third, they seek compensation due to the landlord's contractors (loggers, it would appear) breaking into the rental unit on three separate occasions. The loggers, who were on the property at the landlord's behest felling trees, apparently broke into the house and boarded it and locked it up. The tenants' application indicated a claim of $500.00. In the hearing, I sought clarification of this amount, and the tenants requested $3,000.00.

Analysis

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.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 32(1) of the Act states 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.

Based on the tenants' evidence, both oral testimony and documentary evidence, I am persuaded that the landlord was made aware of a water leak which lead to the hot water being cut off for approximately six weeks. A copy of a text message from the tenant to the landlord supports the tenants' argument. There is no evidence before that the landlord did anything about the issue. I find that a rental unit suitable for occupation must be provided with a supply of hot water.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for compensation. The tenants were entitled to hot water, and power, and the landlord was negligent in not ensuring that these were provided, as was his obligation under section 32(1) of the Act.

In respect of the amount claimed, I find that $500.00 (which is the amount originally claimed) is a reasonable amount of compensation to reflect the absence of hot water for six weeks.

While the issue of the loggers breaking into the property is disturbing, not to mention the RCMP's lackadaisical involvement in rendering any help to the tenants, there is no evidence that the loggers were acting under the landlord's direction. That is, without evidence that the landlord specifically or implicitly asked the loggers to break into the property, I cannot hold the landlord responsible for the loggers' actions.

Thus, I do not find the landlord in breach of the Act for the actions of the loggers. If, indeed, there is any legal claim to be made by the tenants, it would in all likelihood be against the loggers and their company. This type of claim would need to be made under the jurisdiction of the Civil Resolution Tribunal.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the tenants are ultimately successful in their application, I grant them $100.00 in compensation to cover the cost of the filing fee.

A total of $600.00 is awarded to the tenants. Issued in conjunction with this decision is a monetary order which must be served by the tenants on the landlord or the landlord's lawyer.

Conclusion

I hereby grant the tenants' application. Both notices to end tenancy are cancelled.

I hereby grant the tenants a monetary order in the amount of $600.00, which must be served on the landlord or their lawyer. If the landlord fails to pay the tenants the amount owed within 15 days of being served the monetary order, then the tenants may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: April 20, 2021

Residential Tenancy Branch