Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   CNC, CNL, CNLC, MNDC, O, RR, FF

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause, to cancel a notice to end tenancy for landlord's use of property, to cancel a notice to end tenancy for conversion of a mobile home park, money owed or compensation for damage or loss, to allow a tenant to reduce rent for repairs, other and recovery of the filing fee.

The tenant participated in the conference call hearing but the landlord did not. The tenant presented evidence that the landlord was served with the application for dispute resolution and notice of hearing in person. I found that the landlord had been properly served with notice of the tenant's claim and the date and time of the hearing and the hearing proceeded in their absence.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Preliminary Matter to be Decided - Jurisdiction

This property is located on First Nations land. **Residential Tenancy Policy Guideline 27 Jurisdiction** speaks to: *A monetary claim for damages or rent arrears under the Legislation may not affect the right to the use and occupation of Indian Lands, particularly if the tenancy agreement has ended. In one case a landlord and tenant in dispute over a monetary claim were found to be subject to the BC Residential Tenancy Act.*

The tenant spoke to the fact that as of September 2010 the First Nations land is no longer under federal jurisdiction and that section 91 of the *Constitution Act* no longer applies to this land.

I therefore find that the Residential Tenancy Act has jurisdiction in this matter.

Background and Evidence

It was verified at the start of this hearing that the tenant had not been served with any eviction notices by the landlord therefore those portions of the tenants application are dismissed.

The tenant testified that the landlord did not pay the hydro bill in August 2011 which resulted in BC Hydro shutting off the power supply to 2 units in the trailer park. The tenant stated that as he had power, extensions cords were run from his residence to the trailers without power and that the situation had been very urgent as one of the residents requires hydro for a breathing apparatus.

The tenant stated that the other units were without power for 19 days as a result of this incident and that his electrical panel was overloaded during this time resulting in the tenant being without power on a number of occasions and unable to run his air conditioner. The tenant stated that his electric bill had increased because of this situation but because he pays a monthly pro-rated amount he was unable to establish the actual increase of his electric bill.

The tenant stated that the behaviour of the landlord is an on-going issue for not only himself but for the other tenants on the property as well and that his peace and quiet enjoyment has been greatly affected by the landlord's behaviour.

The tenant stated that the landlord continually curses at tenants and threatens tenants with eviction. The tenant referred to 3 incidents in particular where the landlord has been verbally abusive towards him and his wife. The tenant stated that the landlord has referred to him as a pig, a rapist, a fat piece of 'expletive' and his wife as homely.

The tenant stated that on August 17, 2011 the landlord came to his rental unit and began to slander the tenant. The tenant stated that the landlord then had her boyfriend physically assault the tenant and that matter has been referred to the police.

The tenant in this application is seeking $200.00 compensation for damage or loss.

Analysis

Based on the documentary evidence and undisputed testimony of the tenant I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for loss of their peace and quiet enjoyment.

The tenant testified to an on-going pattern of verbal abuse on the part of the landlord and that the landlord often resorts to cursing, name calling and threatening when interacting with tenants. Section 28 of the *Act* is very clear regarding a tenant's peace and quiet enjoyment and that a tenant is to be free from *unreasonable disturbance* and

free from *significant interference* and I find that the landlord's difficult behaviour has directly impacted and had a significant effect on the tenants peace and quiet enjoyment.

Residential Tenancy Act **Section 28 Protection of tenant's right to quiet enjoyment** speaks to:
A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
> *(a) reasonable privacy;*
> *(b) freedom from unreasonable disturbance;*
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Accordingly I find that the tenant is entitled to a monetary order of $100.00 for loss of their peace and quiet enjoyment.

As the tenant was unable to provide evidence regarding an increase of their electrical bill during the August power outage, the tenant will not be awarded compensation for the purported increase of the electric bill. The tenant is however entitled to $50.00 compensation for being unable to use his air conditioner for 19 days.

As the tenant has been successful in their application they are entitled to recovery of the $50.00 filing fee.

Conclusion

The tenant may deduct **$200.00** from future rent owed to the landlord for the monetary award and recover of the filing fee paid to bring their application forward.

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: September 21, 2011.

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Residential Tenancy Branch