Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes:

CNR, MNSD, MNDC, MNR, OLC, RP, PSF, FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, which was filed by the Tenant on May 16, 2013. The Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent; for a monetary Order for the cost of emergency repairs; for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)* or the tenancy agreement; for the return of her security deposit, for an Order requiring the Landlord to comply with the *Act*; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to provide services or facilities required by law; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant applied to amend the Application for Dispute Resolution to reflect the correct spelling of the Landlord's first name, as provided by the Landlord at the hearing. The Landlord did not object to the amendment and the Application for Dispute Resolution was amended accordingly.

The Tenant submitted documents she wishes to rely upon as evidence to the Residential Tenancy Branch on May 17, 2013 and May 31, 2013. The Tenant stated that sometime in May of 2013 she posted the Application for Dispute Resolution, the Notice of Hearing and duplicate copies of all the documents submitted to the Residential Tenancy Branch on the property manager's door. The male Property Manager stated that these documents were received on May 19, 2013. As the Landlord acknowledged receipt of the Tenant's evidence, it was accepted as evidence for these proceedings.

The Landlord submitted documents and a memory stick to the Residential Tenancy Branch on May 29, 2013. The male Property Manager stated that this evidence was mailed to the Tenant on May 28, 2013. The Tenant stated that she received the evidence and that she has viewed the information on the memory stick. As the Tenant acknowledged receipt of the Landlord's evidence, it was accepted as evidence for these proceedings.

The Landlord submitted a second memory stick to the Residential Tenancy Branch on May 31, 2013. The male Property Manager stated that this is a duplicate of the memory stick that was submitted on May 29, 2013 and that it was resubmitted as there was a concern that the first memory stick had been corrupted.

Both parties were represented at the hearing. They were given the opportunity to provide relevant testimony, to ask relevant questions, and to make relevant submissions.

There was insufficient time to consider all of the issues in dispute at this hearing. All of the issues in dispute, with the exception of the application for a monetary Order for money owed or compensation for damage or loss, will be addressed in this interim decision. The hearing was adjourned and the application for a monetary Order for money owed or compensation for damage or loss will be considered when the hearing is reconvened.

As the Tenant had not yet vacated the rental unit when she filed her Application for Dispute Resolution, I find that her claim for the return of the security deposit was premature. The claim for the return of the security deposit is therefore dismissed, with leave to reapply.

Issue(s) to be Decided

The issues to be determined in this interim decision are:

- Should either of the Ten Day Notices to End Tenancy that were served on May 09, 2013 be set aside?
- Is the Tenant entitled to the cost of emergency repairs?
- Is there a need for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement?
- Is there a need for an Order requiring the Landlord to make repairs to the rental unit?
- Is there a need for an Order requiring the Landlord to provide services or facilities required by law?

Preliminary Matter

The Landlord and the Tenant agree that on October 16, 2012 the parties signed a tenancy agreement that indicated the tenancy would begin on October 06, 2012 and that the Tenant was obligated to pay monthly rent of $1,000.00; that the Tenant moved into the rental unit on October 07, 2012; that prior to the start of the tenancy and during the tenancy they discussed the possibility of entering into a “lease purchase agreement”, in which a portion of the monthly rent payment would be credited toward the purchase price of the property.

The Landlord submitted a copy of a “Lease Purchase Proposal”, dated December 06, 2012, in which the Landlord outlined some proposed terms of the “Lease Purchase Agreement. The parties agree that they negotiated the “lease purchase agreement” during the tenancy; that they were unable to agree on the terms of the “lease purchase agreement”; and that the parties did not enter into a “lease purchase agreement”.

The Landlord and the Tenant agree that the Tenant paid the Landlord a “commitment fee payment” of $1,000.00 on December 06, 2012 and that no rent was paid for that month. The Tenant stated that she understood this fee would be applied to the purchase price of the property. The male Property Manager said that he also understood the commitment fee would be applied to the purchase price of the house if they came to an agreement about the sale of the property; that they never did come to an agreement about the sale of the property; and that the Landlord therefore applied the $1,000.00 payment to rent for December of 2012.

I have authority to determine disputes between landlords and tenants for issues relating to a tenancy agreement. I must refuse jurisdiction if the parties have a contract that grants a tenant an interest in the property that goes beyond exclusive possession and occupation of the rental unit.

The undisputed evidence is that although the parties discussed the possibility of entering into a “lease purchase agreement”, the parties could not agree on the terms of the agreement and the Tenant did not agree to purchase the property. I therefore cannot conclude that the Tenant has an interest in this property that exceeds the terms outlined in their tenancy agreement and I find that I have jurisdiction in this matter.

In determining this matter I have placed no weight on the fact that the Tenant paid a “commitment fee” on December 06, 2012 that would be applied to the price of the property if, and when, it was purchased. While the payment/collection of that fee clearly indicates that both parties were interested in pursuing the option to purchase, it does not negate the fact that they did not enter into an agreement to purchase the property. I find it would be illogical to conclude that the payment gave the Tenant an interest in the property, particularly when she was obligated to pay $1,000.00 in rent each month and no rent had been paid for the month of December.

Background and Evidence

The male Property Manager stated that on May 09, 2013 he posted a Ten Day Notice to End Tenancy, which had a declared effective date of May 19, 2013, on the door of the rental unit. This Notice to End Tenancy declared that the Tenant owed $80.00 in rent that was due on April 06, 2013.

The male Property Manager stated that on May 09, 2013 he posted a second Ten Day Notice to End Tenancy, which had a declared effective date of May 19, 2013, on the door of the rental unit. This Notice to End Tenancy declared that the Tenant owed $1,000.00 in rent that was due on May 06, 2013.

The Tenant stated that she received both of the Notices to End Tenancy on May 10, 2013.

The Landlord and the Tenant agree that the Tenant only paid $920.00 of the rent that was due on April 06, 2013. The Tenant stated that the male Property Manager told her that she could retain $80.00 of the rent payment as compensation for cleaning some drywall that fell off an interior wall in December of 2012. The male Property Manager stated that he did not agree that the Tenant could retain $80.00 for repairing the wall.

The Tenant submitted a copy of a rent receipt from April of 2013, which indicates the Landlord received $1,000.00 in rent for April of 2013. There is a notation on the bottom of the receipt that is not clearly legible on the copy submitted as evidence. The male Property Manager says it reads: “short $80.00”. The Tenant stated that she does not recognize the word “short” on her copy. After viewing the receipt and hearing the testimony of the male Property Manager, I accept that the receipt indicates that the payment was “short $80.00”.

The Landlord and the Tenant agree that on May 05, 2013 the male Property Manager told the Tenant that she would not have to pay rent for May and June of 2013 if she agreed to move out of the rental unit by June 30, 2013; that the rent that was due on May 06, 2013 has not been paid; and that the rent that was due on June 06, 2013 has not been paid.

The Tenant stated that she asked the male Property Manager to put his offer in writing and, when he refused, she did not agree to move out of the rental unit. She stated that she did not tell the Landlord she would not move out, she simply did not tell him that she would move out. The Tenant stated that she did not attempt to pay her rent after May 05, 2013 because the male Property Manager told her that she did not have to pay rent for May and June of 2013.

The male Property Manager stated that he asked the Tenant to sign a mutual agreement to end the tenancy for June 30, 2013; she refused to sign the mutual agreement to end the tenancy; and she did not verbally agree to move out of the rental unit, so he believes rent is due for May and June.

Text messages submitted in evidence by the Tenant confirm that the Tenant did not agree to the proposal to vacate the rental unit by the end of June.

During the hearing the Landlord requested an Order of Possession. During the hearing the parties were advised that the Notices to End Tenancy were being upheld and that the Landlord would be granted an Order of Possession that is effective two days after the Notice was served upon the Tenant.

The Tenant was asked if there is a need to issue an Order requiring the Landlord to make repairs to the rental unit; if there is a need to issue an Order requiring the Landlord to provide services/facilities required by law; and if there is a need to issue an Order requiring the Landlord to comply with the *Act* or the tenancy agreement, given that the Tenant is required to vacate the rental unit two days after the Order of Possession is served upon her. The Tenant indicated that it is not likely that any necessary repairs and/or facilities could be repaired/provided prior to her vacating the rental unit. This decision does not prevent me from awarding financial compensation to the Tenant at a later date if the condition of the rental unit interfered with the quiet enjoyment of the rental unit.

The Tenant is seeking compensation for the cost of making emergency repairs. At the hearing the Tenant was advised that a tenant is only entitled for the cost of "emergency repairs" if they are made for the purpose of repairing major leaks in pipes or the roof; repairing damaged or blocked water or sewer pipes or plumbing fixtures; repairing the primary heating system; repairing the electrical system; and/or repairing damaged or defective locks. She stated that she is seeking compensation for the cost of making emergency repairs to the front stairs to the rental unit; that the stairs fell away from the house; and that she could therefore only access the home through the rear door. She was advised that this repair did not qualify as an "emergency repair", given that the stairs were not the only means of accessing the rental unit, and that they would not be considered when determining whether the Tenant had the right to withhold rent for the purposes of making emergency repairs. This does not prevent me from awarding financial compensation to the Tenant at a later date if the condition of the stairs interfered with the quiet enjoyment of the rental unit.

At the hearing the Tenant stated that the roof was leaking, particularly when ice accumulated on the roof. She is seeking compensation for the cost of making emergency repairs to the roof, specifically for periodically removing ice from the roof. She stated that she first reported the problem with ice to the male Property Manager in early or mid-November of 2012; that they met in person on several occasions, at which time they discussed her concerns about ice accumulating on the roof; that the issue was never reported in writing until February 10, 2013; that the issue was never reported by text message; that the male Property Manager told her it was a maintenance issue that was the Tenant's responsibility; and that she hired someone to clear ice from the roof on several occasions.

The male Property Manager stated that the Tenant never informed him there was a need to clear ice from the roof until the Landlord was served with the Application for Dispute Resolution documents.

The Tenant submitted a letter, dated February 10, 2013, in which she mentions that water is leaking into the rental unit due to lack of insulation in the attic, rotten sheeting, ruined shingles, and 2 feet of ice building up on the roof. She stated that she posted this letter on the Property Manager's door on February 10, 2013.

The male Property Manager stated that he did not find the letter date February 10, 2013 posted on his door and that he did not see this letter until the Landlord was served with the Application for Dispute Resolution documents.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into an agreement to pay monthly rent of $1,000.00 by the sixth day of each month and that only $920.00 of the rent for April has been paid.

I find that the Tenant has submitted insufficient evidence to establish that she had permission from the Landlord to withhold $80.00 of the rent payment from April of 2013. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that she had permission to retain this amount. Conversely, I find the receipt for rent from April, which indicates that the payment is "short $80.00", corroborates the male Property Manager's testimony that he did not agree she could pay reduced rent for April. I therefore find that the Tenant still owes $80.00 in rent for April of 2013.

On the basis of the undisputed evidence, I find that the Landlord offered to mutually agree to end the tenancy on June 30, 2013, with the understanding that the Tenant would not be obligated to pay rent for May and June of 2013 if she agreed to that proposal. I find that the Tenant did not agree to that proposal, either verbally or in writing. I find that the Landlord's offer of free rent was clearly contingent on the agreement to vacate the rental unit on June 30, 2013. As the Tenant did not agree to the proposal to end the tenancy on June 30, 2013, I find that she was not entitled to withhold rent for May or June of 2013. I therefore find that the Tenant still owes $2,000.00 in rent for May and June of 2013.

On the basis of the undisputed testimony, I find that two Ten Day Notices to End Tenancy were posted on the door of the rental unit on May 09, 2013, which declared that the Tenant must vacate the rental unit by May 19, 2013. On the basis of the testimony of the Tenant, I find that she received the Notices to End Tenancy on May 10, 2013.

Section 46 of the *Act* authorizes a landlord to end a tenancy if rent is not paid when rent is due. As all of the rent that was due for April, May, and June of 2013 has not been

paid, and the Tenant was served with proper notice to end the tenancy, I find that the Landlord has the right to end this tenancy, pursuant to section 46 of the *Act.* I therefore dismiss the Tenant's application to set aside the Notices to End Tenancy that were served on May 09, 2013.

I find I am able to make this determination before determining whether the Tenant is entitled to compensation for the condition of the rental unit, as section 26 of the *Act* requires a tenant to pay rent when it is due regardless of whether the landlord complies with the *Act* or the tenancy agreement.

Given that this tenancy is ending on the basis of the Ten Day Notices to End Tenancy for Unpaid Rent, I find there is no need to issue an Order requiring the Landlord to comply with the *Act*; an Order requiring the Landlord to make repairs to the rental unit; or an Order requiring the Landlord to provide services or facilities required by law. As this tenancy will end shortly, I find that the Tenant will not benefit from the rental unit being repaired or from the Landlord providing additional services or facilities, given that it is unlikely the repairs could be completed or the services provided prior to the Tenant vacating the unit. This decision does not prevent me from awarding financial compensation to the Tenant at a later date if the need for repairs or the absence of services/facilities interfered with the quiet enjoyment of the rental unit.

Section 33(1)(c)(i) of the *Act* defines an emergency repair as a repair that is made for the purpose of repairing major leaks in the roof. I find that removing an accumulation of ice that contributes to the roof leaking is an emergency repair as defined by the *Act.*

Section 33(3)(b) of the *Act* stipulates that a tenant may make emergency repairs to a rental unit if the tenant has made at least two attempts to report the problem to the landlord, by telephone. I find that the Tenant has submitted insufficient evidence to establish that the problem with ice was reported to the Landlord. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that she told the male Property Manager about the problem on several occasions or that refutes the male Property Manager's testimony that he was never informed about the problem prior to being notified of these proceedings.

In determining this matter I was influenced to some degree by the Tenant's acknowledgment that she never mentioned her concerns about the ice in a text message. Given that these parties communicated frequently and regularly by text message, I find it unlikely that the problem with the ice would not have been discussed in at least one of those text messages, if the parties had been discussing that issue.

In determining this matter I have placed no weight on the letter, dated February 10, 2013, which was submitted in evidence by the Tenant. As the Tenant submitted no evidence to corroborate her testimony that this letter was posted on the Property Manager's door or that refutes the male Property Manager's testimony that he did not see this letter until the Landlord was served with documents for these proceedings, I cannot conclude that this letter was provided to the Landlord.

As the Tenant has not established that she complied with section 33(3)(b) of the *Act,* I find that she was not entitled to retain the cost of removing the ice from any rent payment that was due. This decision does not prevent me from awarding financial compensation to the Tenant at a later date if the build up of ice interfered with the quiet enjoyment of the rental unit.

Conclusion

As I have dismissed the Tenant's application to set aside the Notices to End Tenancy and that Landlord requested an Order of Possession at the hearing, the Landlord is hereby granted an Order of Possession, pursuant to section 55(1) of the *Act*. The Order of Possession is effective two days after it is served upon the Tenant. The Order may be served on the Tenant, filed with the Supreme Court of British Columbia, 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 *Residential Tenancy Act*.

Dated: June 13, 2013

Residential Tenancy Branch