Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: CNC, CNR, DRI, OLC, ERP, RP, LRE, MNDC, OPC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause. The hearing is also to deal with an application by the tenant to cancel the 1-Month Notice to End Tenancy for Cause, to cancel a Ten Day Notice to End Tenancy for Unpaid Rent, to dispute an additional rent increase, to obtain an order that the landlord comply with the Act, to obtain an order that the landlord make repairs and emergency repairs and to obtain an order to suspend the landlord's right to access the rental unit.

Preliminary Issues

The landlord raised the issue of late service of the dispute resolution package for the tenant's hearing. The landlord testified that the tenant served the hearing package after the 3-day deadline specified under the Act. According to the landlord, the tenant made their application on April 19, 2013, but did not serve the documents by registered mail until April 24, 2013 and the landlord did not receive the documents until April 26, 2013.

Section 59(2) of the Act states that an application for dispute resolution must be in the approved form, include full particulars of the dispute that is to be the subject of the dispute resolution proceedings and be accompanied by the fee prescribed in the regulations. Section 59(3) of the Act states that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. (my emphasis).

Section 90(a) of the Act states that a mailed document is deemed to have been served on the 5th day after it is mailed.

I find that, notes on file from the Residential Tenancy Branch, indicate that the person processing this application on Friday April 19, 2013, sent the hearing documents to Service BC that day with instructions to contact the applicants to let them know the hearing package was ready for pick-up and must be served "*no later than Apr 24 2013*"

I find that the government offices in question are not open on the weekend. It follows that, if the tenant was notified on Friday April 19, 2013 that the RTB hearing documents were processed and ready to be picked up the tenants likely picked up the hearing documents on Monday, April 22, 2013. Therefore, mailing the package on April 24, 2013, would be in compliance with the 3-day deadline under the Act.

I find that the hearing date was scheduled for May 16, 2013, approximately 3 weeks after the hearing package was mailed to the landlord. I find that this would permit the landlord sufficient opportunity to respond to the tenant's application.

In fact, the landlord's cross application was filed on May 1, 2013. If the landlord mailed out the hearing notifications to the tenant immediately, they would be deemed received in 5 days thereafter, which would be May 6, 2013. I find that the tenant was left with less than two weeks to prepare their response to the landlord's application, also scheduled to be heard on May 16, 2013 as well.

In any case, I find that, whether or not the application and hearing documents were mailed within the 3-day deadline or two days beyond the deadline, the landlord was not unfairly prejudiced by receiving the tenant's registered mail on April 26, 2013.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Should the One Month Notice to End Tenancy for Cause be enforced or cancelled?
- Should the 10-Day Notice to End Tenancy for Unpaid Rent be cancelled?
- Is the tenant entitled to compensation for loss of value to the tenancy?
- Should an order be granted against the landlord to make repairs to the unit?
- Should an order be granted to restrict the landlord's access?
- Should the landlord be ordered to comply with the Act and Agreement?
- Is the tenant entitled to dispute a Notice of Rent Increase issued by the landlord?

Background and Evidence

The tenancy began in January 2008 and the rent is $1,125.00. A security deposit of $562.50 and a pet damage deposit of $562.50 were paid.

Submitted into evidence were numerous documents including invoices, photos, receipts, a copy of the tenancy agreement and copies of recently exchanged communications, as well as some communications dating back several years.

The landlord testified that a One-Month Notice to End Tenancy for Cause was issued on April 13, 2013, effective May 31, 2013, due to the fact that the municipality ordered the landlord to cease renting one of the two suites in the building.

The tenant's position is that the landlord is terminating their tenancy in reprisal for complaints that the tenant made with respect to the landlord's failure to maintain the residence and also because of the fact that the parties have engaged in disputes in the past over the payment of utilities. The tenant testified that the landlord issued a 10-Day Notice to End Tenancy for Unpaid utilities and the tenant does not agree with the amount of arrears being claimed by the landlord.

The tenant pointed out that the landlord's One Month Notice would be effective May 31, 2013, and yet the landlord issued a Notice of Rent Increase dated April 16, 2013, that would actually not take effect until the end of July 2013, *after* the termination date..

In addition to disputing the Notices, the tenant is seeking an order that the landlord complete repairs on rotting stairs that pose a safety risk. The tenant submitted a photo of these exterior stairs showing that some of the wood looks like it is decayed.

The tenant testified that, throughout their tenancy, they have been required to complete many repairs that should have been attended to by the landlord, and have done so at their own expense. The tenant is claiming compensation of $500.00 representing the value of the tenant's contributions and a rent abatement for delays and neglect by the landlord in addressing these repair issues. The tenant also claimed that they were over charged by the landlord and never reimbursed for utility payments.

The landlord testified that the contractual terms agreed to by the tenant, as part of the tenancy agreement, placed the responsibility for certain repairs on the tenant. The landlord argued that the stairs merely looked old because of the appearance of unpainted surfaces. However, the landlord did make a commitment to have a qualified tradesperson examine the stairs to determine what repairs are necessary.

The landlord disputed that any funds were owed to the tenant for overpayments. In regard to the allegation of devalued tenancy and the tenant's claim for repairs, the landlord did not agree that the tenant should be compensated $500.00.

In regard to the tenant's request for an order to restrict the landlord's access, the tenant testified that this is necessary due to the landlord's conduct in repeatedly attending the rental property with various notices that the tenant believes is a form of harassment.

Analysis Notices to End Tenancy

I find that section 47of the Act, permits a landlord to give Notice to end a tenancy for cause and requires that a One-Month Notice be completed on the proper form with an

effective date that is not earlier than one month after the date it is issued and is the day before the day in the month, that rent is due under the tenancy agreement.

Based on the evidence and the testimony, I find that the landlord's Notice was issued and served pursuant to a government order from the municipality dated April 6, 2013 stating that the landlord must terminate one of the tenancies in the building as he has violated zoning bylaws. I accept that the landlord must comply with the letter from the municipality stating that the landlord must cease the violation or be subject to fines.

Accordingly, I find that the One-Month Notice to End Tenancy for Cause should not be cancelled and that an Order of Possession is warranted. Therefore the portion of the tenant's application requesting that this Notice be cancelled is dismissed. I set the effective date terminating this tenancy to be June 30, 2013 and an Order of Possession will be issued to the landlord.

In regard to the Ten Day Notice to End Tenancy for Unpaid Rent, I find that the landlord has not successfully proven that the tenant is in arrears for utilities in the amount shown on the Notice. Therefore I find that the tenant's request to cancel the Ten Day Notice to End Tenancy for Unpaid Rent must be granted.

Analysis Monetary Claim

With respect to the tenant's claim for compensation and a rent abatement totaling $500.00, I find that section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an arbitrator the authority to determine the amount and to order payment.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

I find that section 32 of the Act imposes responsibilities on the landlord to provide and maintain residential property in a state of decoration and repair that complies with the

health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

Under section 32 of the Act, a tenant is only required to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant, a tenant is not required to make repairs for reasonable wear and tear. Nor can a tenant be held responsible for repairing or replacing aged, worn or broken household fixtures, finishes or infrastructure deficiencies.

I find that this landlord did not fully comply with section 32 of the Act because the landlord failed to inspect the premises and neglected to respond to complaints made by the tenants over the duration of the tenancy. I also find that the tenancy agreement contained terms improperly delegating some tasks to the tenant which fall under the responsibility of the landlord under the Act.

In regard to the landlord's argument that the parties had mutually agreed on these terms as part of their rental contract, I find that section 5 of the Act states that landlords or tenants may not avoid or contract out of the Act or Regulation and that any attempt to avoid or contract out of the Act or Regulations is of no force or effect.

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if a) the term is not consistent with the Act or Regulations, b) the term is unconscionable, or c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Accordingly I find that the landlord's noncompliance with the Act caused a loss of value to the tenancy and unfairly imposed labour and expense on the tenant.

In regard to the tenant's claim for funds owed to them by this landlord, I find that the evidence was not sufficiently clear to allow this claim.

Based on the evidence before me, I find that the tenant is entitled to monetary compensation in the amount of $500.00 for devalued tenancy and reimbursement for some of the costs incurred by the tenant in repairing and maintaining the rental unit.

Based on the evidence and the testimony discussed above, I find that the landlord's application for an Order of Possession is warranted and I hereby grant an order effective June 30, 2013. This order must be served on the tenant and may be enforced through B. C. Supreme Court if necessary.

Based on the evidence and the testimony discussed above, I grant the portion of the tenant's application seeking to cancel the Ten Day Notice to End Tenancy for Unpaid

Rent. I also grant the portion of the tenant's application seeking a monetary order in the amount of $500.00. This order must be served on the Landlord and may be enforced in Small Claims Court if necessary.

I find that the remainder of the issues in tenant's application have been resolved or have been rendered moot due to the termination of the tenancy. These are dismissed with leave to reapply.

I order that each party is responsible to cover their own costs of their applications.

I also order that the tenant's security deposit of $1,125.00 plus interest, which is currently held in trust by the landlord, be administered in accordance with section 38 of the Act Once the tenancy has ended.

Conclusion

Both parties are partially successful in their applications. The tenant's request that the Ten Day Notice to End Tenancy for Unpaid Rent be cancelled and that a monetary order be granted is successful. The landlord's cross application seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause is successful..

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 11, 2013

Residential Tenancy Branch