Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNR, OLC, MNDC, ERP, AAT, LAT, RR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution made by the tenant for the following reasons;

- to cancel a notice to end tenancy for unpaid rent and utilities and for cause
- for a Monetary Order for the cost of emergency repairs and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the "Act"), regulation or tenancy agreement
- for the landlord to comply with the Act, regulation or tenancy agreement
- for the landlord to make emergency repairs for health and safety reasons
- to allow the tenant access to the unit
- to authorise the tenant to change the locks to the rental suite
- to allow the tenant to reduce rent for repairs agreed upon but not provided
- to recover the filing fee for the cost of the application from the landlord

An agent for the landlord, and the tenant appeared for the hearing. No issues in relation to the service of the hearing documents and evidence under the Act were raised by any of the parties.

The landlord's agent and tenant both provided affirmed testimony during the hearing and documentary evidence in advance of the hearing. Whilst a large amount of documentary evidence was submitted for this hearing, I have only refered to the documentary evidence that is relevant to the issues below.

At the start of the hearing, it was determined that when the tenant made the application for dispute resolution, the filing fee was waived by the Residential Tenancy Branch and as a result, I dismiss the tenant's claim for the return of the filing fee for the cost of making the application.

Issue(s) to be Decided

- Is the tenant entitled to cancel the notices to end tenancy?
- Is the tenant entitled to monetary compensation for losses under the Act and to reduce rent for repairs and emergency repairs completed to the rental suite?
- Is the tenant allowed to change the locks to the rental suite and gain access to the rental suite?
- Has the landlord complied with the Act?

Background and Evidence

Both parties agreed that this tenancy started on May 8, 2013 on a month to month basis. Rent was agreed to be paid by the tenant to the landlord in the amount of $700.00 on the first day of each month. The landlord did not request a security deposit and no move in condition inspection report was completed at the start of the tenancy. The tenant testified that in November, 2013 he presented the landlord with a completed tenancy agreement which the landlord failed to sign as of December 10, 2013. The unsigned tenancy agreement was provided as evidence and documents the landlord's service address and telephone contact number.

The tenant testified that he had served the landlord with a written notice on January 13, 2014 ending his tenancy on February 1, 2014 because of the problems associated with the tenancy. The tenant testified that he then rescinded the notice on January 20, 2014 by informing the landlord in writing that he was unable to vacate the rental unit as per his written notice. The tenant testified that this was because his new tenancy that was due to start on February 1, 2014 fell through and as a result he now has nowhere to go.

The landlord's agent testified that the landlord had accepted the written notice of the tenant to end the tenancy by sending the tenant a written letter on January 14, 2014 accepting the tenancy will be ending on February 1, 2014. The landlord arranged for the rental suite to be re-rented for February 1, 2014. As a result, the landlord's agent made an oral request for an Order of Possession based on the tenant's notice to end tenancy and the landlord's obligation to the new tenancy.

The landlord's agent testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to the tenant on December 14, 2014 because the tenant had failed to pay rent in the amount of $700.00 that was due on December 1, 2013 with an effective date of vacancy of December 27, 2013.

The tenant confirmed the date the notice to end tenancy for unpaid rent or utilities was served to him and testified that he had made a deduction from the rent for emergency repairs. The tenant testified that since May, 2013, he heard the pipes in his rental suite making thumping noises during the summer season, which was creating a disturbance to him. This occurred every other day for the following months until the tenant decided that he was going to address the issue with the landlord. The tenant had a verbal conversation with the landlord in early August, 2013. The tenant testified that during the conversation, the landlord agreed that he could call out a plumber to fix the issue.

The tenant testified that he called a plumber to look at the issue immediately after the conversation with the landlord. The plumber explained to the tenant that the water pressure coming through the pipes from the city was very high and this could cause potential damage to the pipe valves. The tenant testified that the landlord was present during this inspection and that the tenant and landlord then verbally agreed that the tenant would pay the plumber for the work to be done to correct this issue and that the tenant and landlord would come to some arrangement at a later date for the landlord to reimburse the tenant.

The tenant testified that shortly after the repair was completed, he verbally asked the landlord to make payment to him for the cost of the repair in the amount of $402.45 but the landlord refused to do so. The tenant testified that he had provided the landlord with the original invoice as part of his request for the money.

The tenant testified that he got frustrated because the landlord would not give him the money for the cost of the repairs. As a result, the tenant put a stop payment on his December 1, 2013 rent cheque so that he could consult with the Service BC staff who told him he could go ahead and make the deduction from his rent. The tenant then made the deduction and provided the landlord with a cheque in the amount of $297.55 on December 6, 2013.

The landlord's agent testified that the tenant had informed the landlord about the plumbing issues but that the tenant had arranged for the plumber to visit the rental suite without her authorisation. The landlord explained to the tenant that she had her own plumber but the tenant insisted that he wanted to use his own and that he would take care of the repair and the payment of his own accord.

The landlord provided the invoice, which had been given to her by the tenant. The invoice shows that the repair included the replacement of a 0.5 inch pressure valve and the water pressure was reset to 55 psi. The landlord's agent submitted that this was not an emergency repair as no water was leaking and there was no imminent or perceived

danger to the health and safety of the tenant as this problem had been occurring for a long period of time. The landlord's agent also submitted that the tenant had no right or permission to call his own plumber and then look to seek the deduction of this repair four months later.

The landlord's agent testified that the tenant's rent cheque for December 1, 2013 had been stopped by the tenant and that the tenant had then given the landlord another cheque, with the deduction, five days later without any consent or written request to make the deduction. The tenant testified that he had asked the landlord if he could make the deduction in September, 2013 by giving her a rent cheque with the deducted amount but the landlord refused to accept it. The landlord's agent submitted that the tenant deducted the repair amount from the December, 2013 rent, in retaliation, only after he was served with the notice to end tenancy for cause on December 1, 2013.

In relation to the tenant's monetary claim, the tenant testified that he was claiming 200 hours of labour at $20.00 per hour for painting and decorating of the laundry room, second bedroom and entry way at the back of the property over the course of two weeks. The tenant testified that this included sanding of the walls and baseboards and caulking of the floors to reseal them. The tenant provided no corroborating evidence such as pictures of the work carried out or invoices to support this claim. The tenant testified that the landlord instructed him to paint it as it would improve the value of the property and that he had pictures of the work that he had carried out but did not have the means or know how to download these onto a CD for this hearing.

The tenant testified that the remaining amount of his $5,000.00 claim comprised of: moving costs as he was being forced to move out due to the problems with the landlord; a security deposit which he had to pay for his new tenancy; expenses for preparing for this hearing; fuel charges incurred by the tenant in looking for a new rental suite; and costs for the inconvenience and harassment caused by the landlord.

The landlord's agent stated that the tenant wanted to paint the rental suite voluntarily and for his own better enjoyment of the rental suite and that at no time did the landlord force him to do this, either verbally or in writing. The landlord's agent testified that the landlord provided the paint to the tenant as a courtesy as the landlord knew that this would only go to improving the look of the rental suite. However, the landlord did not at any time inform the tenant that she would be paying for these costs and the landlord's agent claims that the tenant is now making a retro-attempt to claw these expenses back from the landlord.

When the tenant was questioned about the harassment and the other issues relating to his claim, the tenant testified that the landlord had changed the locks to the utility room and the stairwell of his rental suite and this was against the Act. The tenant stated he had witnesses that could testify of the landlord's entry but was unable to produce any witnesses for this hearing.

The landlord's agent denied any of the harassment allegations made by the tenant and testified that the landlord feared for her safety as the tenant had changed the locks to doors that allowed him access to the landlord's part of the house. The landlord suspected that the tenant had been entering her suite as she left threads between the doors which were broken proving that there was entry into her part of the house. The landlord asked the tenant to re-change the locks four times but the tenant refused to do so.

Eventually the landlord changed the locks to parts of the tenant's suite to prevent the tenant from accessing the landlord's suite and other areas, such as storage rooms, which were not part of the tenancy, restoring the original locks as of the start of the tenancy. The landlord's agent testified that the only time the landlord entered the tenant's rental suite was at the tenant's request and with his permission for the purposes of letting his dog out when the tenant was going to be away for extended periods of time.

The tenant claimed in his application that the landlord has caused him to fear for his safety and in the tenant's written submission he states that the landlord has unauthorised firearms in her rental suite by the front door. The landlord states in her written submissions that she does have firearms but these are hidden in her home and that this is further proof that the tenant has been entering her suite without permission as he would not know this fact unless he had been in her suite.

The landlord states in her written submissions that no written tenancy agreement was signed at the start of the tenancy for which she is regretful for but that she did not take a security deposit from the tenant at the start as he was in financial difficulty at the time. The landlord did not want to sign the tenancy agreement presented to her by the tenant in November, 2013 because of the problems with the tenancy and her intention to end the tenancy which was done shortly afterwards by serving the notice to end the tenancy for cause.

The tenant alleges that the landlord stole his property. In the landlord's written submission, the landlord states that the tenant put meat in a freezer which is not part of his rental suite and when the tenant asked for it, the landlord refused to give it back to

him without the presence of a witness out of fear for her safety. The tenant called the police who then facilitated the removal of the meat products in the presence of both parties.

The tenant testified that the landlord has harassed him by playing loud music, slamming doors and stomping about all hours of the day and night. However, the tenant provided no corroborating evidence to support these claims.

Analysis

Policy guideline 11 to the Act states that a landlord and tenant cannot unilaterally withdraw a notice to end tenancy unless there is consent from both parties. The tenant ended the tenancy for February 1, 2014 by issuing the landlord with a written notice in accordance to section 45 of the Act. The landlord provided evidence to show that the tenant's notice to end tenancy had been accepted in good faith and does not consent to the tenant rescinding his notice to end the tenancy. Therefore, based on this, I find that the tenancy will end on February 1, 2014 pursuant to the tenant's notice provided to the landlord under section 45 of the Act.

The landlord made an oral request for an Order of Possession based on the two notices to end tenancy served to the tenant. Under section 55(1) of the Act, the Arbitrator may only issue an Order of Possession in relation to a notice to end tenancy which has been upheld. As a result, I have made the following analysis below.

In relation to the notice to end tenancy for unpaid rent or utilities, I find that the content of the approved form and the manner in which it was served to the tenant complies with the Act.

The tenant claims that he had a right under section 33 of the Act to deduct the cost of emergency repairs from his rent. This section of the Act is very specific in that it requires the tenant to pursue a course of action that, if followed correctly, allows the tenant to make the deduction as follows:

A tenant may have emergency repairs made only when all of the following conditions are met: (a) emergency repairs are needed; (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs; (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs. The tenant may claim these amounts back from the landlord by providing the landlord with a written account of the emergency repairs and a receipt for each amount claimed and if the landlord fails to

make reimburse the tenant, the tenant may deduct this amount from rent or otherwise recover the amount.

In this case, I am not satisfied that the circumstances around the repair referred to by the tenant falls under section 33 of the Act as being an emergency repair. The tenant states that he had been putting up with the problem of the banging pipes for several months suggesting that this was not an emergency. The tenant did not provide evidence from the plumber who fixed the problem that the repair was urgent, as it related to the replacement of a valve and there is insufficient evidence to show what the consequences would have been had this valve not been replaced.

The tenant states that the landlord gave him permission to do the repairs but the landlord disagrees with this stating that the tenant took it on his own shoulders to deal with the issue. As a result, I find that the tenant has not provided the necessary evidence to support his actions that he followed the Act by contacting the landlord twice and giving the landlord an opportunity to deal with the repairs before he had a right under the Act to make the repair. It would have been prudent in this case that if the tenant thought this was an emergency repair, to have left this to the landlord to deal with as required by the Act, but instead the tenant pursued a different course of action, be it that he claims that he had consent from the landlord to do so.

The Act states that a landlord must reimburse the tenant for emergency repairs after providing the landlord with a written account of the emergency repairs **accompanied** by a receipt for each amount claimed. It is only when this condition is met and the landlord fails to make payment to the tenant, can the tenant go ahead and deduct this amount from rent.

In this case, I also find that had the repair been deemed to be an emergency, which I have found was not an emergency, the tenant failed to provide the landlord with a **written account** of the emergency repairs as required by the Act. This could have taken the form of a report from the plumber explaining the necessity of the repair and the consequences of not undertaking it. If the tenant felt that he had an understanding that the landlord was going to reimburse him for the repairs, the tenant had other remedies under the Act to deal with this through dispute resolution, but instead chose to make the deduction from his rent, which I find he was not entitled to do.

As a result, I uphold the notice to end tenancy for unpaid rent or utilities issued to the tenant on December 13, 2013. The landlord agreed to allow the tenant to vacate the rental suite at 1:00 p.m. on February 1, 2014. As I have upheld the notice to end

tenancy for unpaid rent or utilities, I grant the landlord an Order of Possession effective for this date and time pursuant to section 55(1) of the Act.

As the tenancy has been ended in accordance with the Act, the tenant's remaining application, apart from the monetary portion, are now moot points and any findings in these remaining matters will have no effect on the tenancy. As a result, I dismiss the remainder of the tenant's application without leave to re-apply and will deal with the tenant's monetary claim below.

In relation to the tenant's claim for the painting and decorating of the rental suite in the amount of $2,400.00, the tenant has failed to provide sufficient evidence to show that the landlord had agreed in writing to compensate him for his time and labour and there is insufficient evidence that the landlord forced the tenant to do this decoration. I accept the evidence of the landlord, on the balance of probabilities, that the landlord agreed that the tenant could do the painting and that the intention of this arrangement was that the tenant would do this at his own expense to increase his enjoyment of the tenancy.

In relation to the remaining portion of the tenant's monetary claim for moving expenses and harassment, I find that the tenant has failed to meet the burden of proof to show that he is entitled to these monies. The tenant is claiming for moving expenses that have not been incurred at the time of this hearing and I find that the landlord cannot be held financially responsible based on a course of action that the tenant took, which ultimately led to the end of the tenancy as described above.

The testimony and documentary evidence provided by both parties in relation to the harassment, changing of the locks by both parties and stealing of each other's property comes down to one party's word against the others and neither party has provided sufficient independent and corroborating evidence to support their verbal testimony. When a party makes a monetary claim against the other, they take on the burden of proving their claim. In this instance I find that the tenant has not been successful in proving his monetary claim. I also find that the tenant failed to explore other remedies available to him under the Act when these issues arose, to deal with the failure of the landlord to comply with the Act during the tenancy, but instead I believe that the tenant is now trying to deal with these issues only after he was given a notice to end tenancy for cause by the landlord. As a result, I dismiss the tenant's monetary claim without leave to re-apply.

Conclusion

For the reasons set out above, I dismiss the tenant's application in its entirety without leave to re-apply.

The landlord is granted an Order of Possession which is effective at 1:00 p.m. on February 1, 2014. This order must be served onto the tenant and if the tenant fails to vacate the rental suite in accordance with the order, the order may be enforced in the Supreme Court 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: January 24, 2014

Residential Tenancy Branch