



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, OPR, MNR & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on September 3, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other by mailing, by registered mail to where the other party resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated September 3, 2014?
- b. Whether the tenants are entitled to an order allowing the tenants to reduce rents for repairs, services or facilities agreed upon but not provided?
- c. Whether the tenants are entitled to an order to recover the cost of the filing fee?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?

f. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on October 1, 2012. The rent is \$1000 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$500 at the start of the tenancy.

In early August 2014 the tenants reported a water leak to the landlord. The tenants told the landlord they thought it was caused by rodents eating through the plastic pipe. The landlord called in his insurance company. The work was not completed until late September.

The tenants allege the landlord agreed they did not have to pay the rent for September in compensation for the reduced value of the tenancy. The landlord denies this. The tenants initially withheld the rent for October but it was subsequently paid.

The tenant(s) continue to reside in the rental unit.

Tenants' Application:

After carefully considering the disputed evidence of the parties I determined the tenants failed to prove that the landlord agreed with the tenants that they did not have to pay the rent for September. The landlord denied any such agreement. The tenants submitted that an e-mail to his insuring company inquiring whether the tenants would be compensated is evidence of this agreement. I disagree. The communication of the landlord to the tenants throughout the relevant time period demanding the payment of the rent was consistent with the landlord's testimony that he did not agree with the tenants. The landlord's evidence is preferred to that of the tenants.

Section 26(1) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Even if it is determined that the tenants are entitled to compensation for the reduced value of the tenancy caused by the water problem, the tenants did not have a right under the Act to deduct the rent for September. As a result I ordered that the tenant's application for an order cancelling the 10 day Notice to End Tenancy be dismissed. The tenancy shall end.

Tenants' Application for a Reduction of Rent:

The tenants seeks compensation for the reduced value of the tenancy caused by the water damage. The tenants testified they did not have a functioning fridge for over two months. The Restoration company took an extended period of time to make the repairs. The landlord testified he acted as fast as can be reasonably expected. Further, he submits that the cause of the leak was the negligence of the tenants in installing a dishwasher.

Policy Guideline #16 includes the following statement:

“Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the

landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.”

After carefully considering the disputed evidence of the parties I determined the landlord has failed to prove that the water problem was caused by the negligence of the tenants. The evidence of the mechanical contracting company in the letter dated October 10, 2014 was not based on an inspection of the rental property but on a photograph only. Further, that person did not attend the hearing to make himself subject to cross-examination. There does not appear to be any evidence from the contractors who first attended the rental unit as to the cause of the leakage. While the tenants may have failed to obtain required permits this is not sufficient proof that the water problem was caused by improper installation. In the circumstances I determined the landlord has failed to prove the tenants were negligent in causing the water problem.

Policy Guideline 16 provides that the tenant is entitled to compensation where a tenant is deprived of the use of all or a part of the premises even where there has been no negligence on the part of the landlord. I determined the tenants are entitled to compensation in the sum of \$250 per month for two months for a total of \$500. The tenants have been partially successful in their application. **I determined they are entitled to recover half of the cost of the filing fee or the sum of \$25 for a total of \$525.**

Landlord's Application:

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenants' application for an order cancelling 10 day Notice to End Tenancy was dismissed. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. **Accordingly, I granted the landlord an Order for Possession on 2 days notice.**

The tenants must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

With respect to each of the Landlord's claims I find as follows:

- a. I determined the landlord is entitled to the sum of \$1000 for non-payment of rent for the month of September. I dismissed the landlord's claim for rent for October as that has been paid.
- b. I determined the landlord is entitled \$951.15 for the cost of utilities. Water was not included with the rent. The tenants agreed to pay the utility bill and made one payment of \$100. I determined the landlord is entitled to the amount claimed being the amount that remains outstanding for the period October 1, 2012 to August 12, 2014.
- c. I dismissed the landlord's claim for the cost of the deductible. I determined the landlord failed to prove the tenant's were negligent in causing the water problem.

In summary I determined the landlord has established a monetary claim against the tenants in the sum of \$1951.15 plus the sum of \$50 in respect of the filing fee for a total of \$2001.15.

Summary:

I dismissed the tenants application to cancel the 10 day Notice to End Tenancy and I granted an Order for Possession on 2 days Notice. I determined the tenants have established a claim against the landlord in the sum of \$525. I determined the landlord has established a claim against the tenants in the sum of \$2001.15. After setting off one claim against that of the other I ordered that the tenants pay to the landlord the sum of \$1476.15.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court 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: October 31, 2014

Residential Tenancy Branch

