Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, O, FF, CNR

Introduction

There are applications filed by both parties. The landlord seeks an order of possession and a monetary order for unpaid rent, for compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The tenants have also filed an application to cancel a notice to end tenancy issued for unpaid rent and for compensation for loss of quiet enjoyment.

Both parties attended the hearing by conference call and gave testimony. The landlord confirmed receipt of the notice of hearing package and the submitted documentary evidence submitted by the tenants. The tenants have confirmed receipt of the notice of hearing package and the submitted documentary evidence by the landlords. As such, I am satisfied that both parties have been properly served with the notice of hearing package and the submitted documentary evidence.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit?
Is the tenant entitled to an order cancelling the notice to end tenancy?
Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on March 1, 2014 on a fixed term tenancy ending on February 28, 2015 as shown by the submitted copy of the signed tenancy agreement signed on February 20, 2014. The monthly rent is $1,550.00 payable on the 1st of each month and a security deposit of $775.00 was paid.

Both parties confirmed that the landlord served the tenant with a 10 day notice to end tenancy issued for unpaid rent dated October 21, 2014 by posting it to the rental unit

door on October 21, 2014. The notice states that rent of $750.00 was unpaid by the tenant that was due on September 1, 2014. The notice also displays an effective end of tenancy date of October 31, 2014.

The tenants claim that an agreement was made with the landlord to not pay the entire September rent by withholding $750.00. The tenant states that a letter dated August 21, 2014 was sent and received by the landlord. This letter states, "...The renters contacted the tenancy branch and the abatement company and they both said that the asbestos needs to be fully removed for it to be considered safe. So we the renters are giving written notice that the asbestos needs to be fully and properly removed by professionals on or before August 31, 2014 or we will be reducing our rent in the amount of $775.00 until the asbestos is fully taken care of...We hope that you can understand the importance of having the asbestos removed and that the arrangements will be made in a timely manner to get this issue resolved. We as renters are also prepared to go to arbitration if this is still unresolved by the date noted above." The tenants state that the landlord accepted this agreement by not refusing it. The landlord confirms receiving the letter dated August 21, 2014, but state that no agreement was made. The landlord stated that her understanding was that once the asbestos was taken care of that the tenant would pay the rent owed. Both parties confirmed that the asbestos work was later resolved. The tenant relies on an excerpt from a previous Residential Tenancy Branch File disputes involving both parties. The tenant refers to page 2 of the decision under Background and Evidence on RTB File 825478. "The landlord says the tenant did not seem to be in a rush to have it dealt with, until some conflict with the owner when he attended the property in August. She says tenants have held back half their rent for September 2014 and that is reasonable compensation for the delay." The tenant states that this is proof that the landlord accepted the terms of the letter dated August 21, 2014. The landlord disputes this stating that the landlord was willing to accept a delayed rent payment after resolving the asbestos issues.

The landlord seeks an order of possession and a monetary claim for unpaid rent of $750.00. The landlord withdrew the $3,000.00 claim of compensation for financial and emotional hardship. The landlord stated that this portion of the claim was without merit and was not necessary.

The tenant seeks an order cancelling the notice to end tenancy issued for unpaid rent and a monetary claim for $3,875.00 for the loss of quiet enjoyment because of the landlord's illegal actions coming to the rental property unannounced over a 5 month period. The tenant states that this is for $775.00 per month which is equal to ½ of the monthly rent because, "I find it fair" as compensation. The tenant explains that the landlord attended on 4 occasions. The first in April of 2014 the landlord attended

unannounced and walked around the property without introducing himself. The landlord then talked to the tenant and removed bottles of hot tub chemicals telling the tenant that he wished to take them to sell. On the second occasion in August 2014 the landlord attended the rental property to put duct tape over the pipes. The tenant states that the landlord attended unannounced to remove tape that were wrapped around the pipes. This was delayed as the tenant cautioned the landlord that someone certified should be inspecting the pipes. On the third occasion approximately 1 week later the landlord's parents attended to inspect the tape unannounced. On the fourth occasion approximately 1 week later 3 individuals attended to inspect the pipes unannounced. The tenant also states that on a separate occasion an unknown individual attended and looked into the windows. The landlord disputes the tenants claims stating that the only unannounced visit was the 1st occasion when the landlord attended to pick up the hot tub chemicals. The landlord states that all subsequent visits are where verbal notice was given and accepted by the tenant. The landlord states that verbal notice by telephone afterwards was given to the tenant so that the landlord could attend to inspect the tape on the pipes. The landlord states that at that time, both parties agreed that the tenant could build a sidewalk and that the owner would pay him. The landlord states on August 18, 2014 the tenants were notified by the landlord's agent that the owner would attend to look at the tape on the pipes. On August 28, 2014 the owner's father attended with two contractors to inspect the pipes. The landlord states that notice was given verbally as per the tenant's written statements in their documentary evidence.

Analysis

As both parties have confirmed that a 10 day notice to end tenancy issued dated October 21, 2014 for unpaid rent was served by the landlord to the tenant on October 21, 2014 by posting it to the rental unit door, I am satisfied that the tenant was properly served as per the Act. The tenant acknowledged in their direct testimony that the entire rent was not paid and that $775.00 was withheld as part of an agreement with the landlord.

I accept the evidence submitted by both parties. The tenant has stated that an agreement was accepted by the landlord for the tenant with withhold rent of $775.00 for September 2014 until the landlord completed work involving the asbestos in the rental property. The tenant relies on the letter dated August 21, 2014 as an offer to the landlord to resolve a dispute. The tenant also relies on the landlord's inaction stating that by not refusing the agreement that the landlord accepted it. The landlord has disputed the tenants claim that an agreement was made. The landlord stated that they received the offer, but no acceptance was made. The landlord attributed the delay for September 2014 rent as a reasonable until the Asbestos issue was resolved. The

landlord stated that up until this issue, the tenants were easy to communicate with. I prefer the evidence of the landlord over that of the tenant. I find that there is insufficient evidence to show that there was an offer and an acceptance of that one made by the tenant. Were I to accept that the landlord accepted the offer made by the tenant, I would interpret the offer as a delayed payment of rent until the asbestos was resolved. I find that the tenant has failed to provide sufficient evidence to satisfy me that an agreement was made with the landlord for compensation in lieu of rent payment. The tenants application to cancel a notice to end tenancy is dismissed. The landlord's notice dated October 21, 2014 is upheld. The landlord is granted an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the landlord's monetary claim, I find that as the tenant has acknowledged not paying the $750.00 rent and that I have determined on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant that there was no offer of compensation in lieu of rent that the landlord has established a claim of unpaid rent of $750.00. The tenant has provided insufficient evidence that there was an agreement and I find the landlord reason that they would accept a late rent payment after the asbestos issues were resolved.

Residential Tenancy Branch Policy Guideline #6 speaks to the loss of quiet enjoyment. It states,

Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however a written provision setting out the terms in the tenancy agreement pertaining to the provision of quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

• **Basis for a finding of breach of quiet enjoyment**

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in

such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:
· **entering the rental premises frequently, or without notice or permission**;· unreasonable and ongoing noise; · persecution and intimidation; · refusing the tenant access to parts of the rental premises; · preventing the tenant from having guests without cause; · intentionally removing or restricting services, or failing to pay bills so that services are cut off; · forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or, · allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

The tenants have stated that over a 5 month period, the landlord has attended unannounced breaching their quiet enjoyment of the rental property on 4 occasions. Both parties have confirmed on the first occasion that the landlord attended unannounced on the property and spoke to the tenants and then later removed some hot tub chemicals in April of 2014. The tenants state that the landlord and/or his agents attended a further 3 times in relation to the taped pipes unannounced in August of 2014. The landlord dispute the tenants claims that no notice was provided to the tenant. The landlord referenced the tenant's written statements which show that verbal notice was given by telephone by the landlord's agent to the tenant and that verbal notice was given during each occasion for the next date of attendance. Each of the subsequent 3 visits were to inspect and resolve the taped pipes. The landlord states that all of the asbestos issues were completed by a professional certified company on September 12, 2014.

I find that although the tenants were temporary inconvenience by the 3 visits of the landlord that this is a far cry of a prolonged and frequent inconvenience over a 5 month period.

Residential Tenancy Branch Policy Guideline #6 also states,
It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

I find that the landlord's right and responsibility to maintain the premises outweigh any temporary inconvenience to the tenant. In this case, other than the attendance by the landlord and his workers (once in April and 3 times in August), the tenant has not provided any details of how this disrupted their quiet enjoyment. As well, the tenants have failed to provide an explanation of how they came to quantify the compensation which would be equal to ½ of the monthly rent for 5 months. The tenants have not provided any details of any inconveniences that took place to justify compensation during the months of May to July of 2014 for those 3 months.

In summary the tenants have failed to provide sufficient evidence to satisfy me of a loss of quiet enjoyment that would override the landlord's right and responsibility to maintain the property that could not be deemed a temporary inconvenience. As such, the tenant's monetary claim is dismissed.

The landlord has established a monetary claim of $750.00 for unpaid rent. The landlord is entitled to recovery of the $50.00 filing fee. I order that the landlord may retain the $775.00 security deposit in partial satisfaction of the claim. The landlord is granted a monetary order for the balance due of $25.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant's application to cancel a notice to end tenancy is dismissed.
The landlord is granted an order of possession and a monetary order for $25.00.
The landlord may retain the security deposit.

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: December 04, 2014

Residential Tenancy Branch