



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated October 28, 2019 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to complete regular repairs to the rental unit, pursuant to section 33; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The landlord, the landlord owner ("owner") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The owner confirmed that the landlord was the building manager and that she had permission to represent the owner at this hearing. This hearing lasted approximately 48 minutes. The tenant spoke for most of the hearing time.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

The tenant confirmed that she would be vacating the rental unit by February 1, 2020. I notified both parties that since the tenancy was ending, the tenant's request for regular repairs was dismissed without leave to reapply.

Both parties agreed to settle a portion of the tenant's application, except they were unable to settle the tenant's rent reduction claim for \$25,000.00, so I made a decision regarding the tenant's monetary claim only.

Settlement of End of Tenancy Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of the tenant's dispute.

Both parties agreed to the following final and binding settlement of a portion of the tenant's dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on February 1, 2020, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlord agreed that the landlord's 1 Month Notice, dated October 28, 2019, was cancelled and of no force or effect.

These particulars comprise a full and final settlement of a portion of the dispute for both parties, except for the tenant's monetary claim. Both parties understood and agreed to the above terms, free of any duress or coercion. These terms are legal, final, binding and enforceable, which settles a portion of this dispute, except for the tenant's monetary claim.

The tenant applied for a rent reduction of \$25,000.00. I made a decision regarding the tenant's monetary application because the parties were unable to reach a settlement on that claim. Below are my findings.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. Monthly rent in the current amount of \$661.00 is payable on the first day of each month. A security deposit of \$305.00 was paid by the tenant and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement. The tenant continues to reside in the rental unit.

The landlord said that the tenant moved in on May 1, 2015, while the tenant claimed that it was on May 2, 2015.

The tenant seeks a rent reduction of \$25,000.00. The tenant maintained that there was black mold inside the rental unit, she provided photographs of same, it was on the wall beside the front door, and there was black slime on the two windows in the living room and the kitchen. She stated that she initially did not do her research, she ignored the issues for awhile, but it caused damage to her health. She said that she had daily diarrhea and bowel issues, as well as psoriasis. The tenant explained that the landlord told her not to complain about the mold, if the landlord agreed to fix the uneven kitchen flooring, but she did not find it to be a big problem that needed to be fixed.

The landlord disputes the tenant's monetary claim. The owner confirmed that there were no complaints about mold from other tenants in the rental building, the tenant's rental unit was inspected, and no mold was found in the tenant's unit or other units inspected. The landlord stated that the rental building was old, so the floors squeak in the tenant's and another rental unit.

Analysis of Tenant's Monetary Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for \$25,000.00, without leave to reapply. I find that the tenant was unable to justify the \$25,000.00 amount being claimed. I find that the tenant failed all four parts of the above test. The landlord disputed the tenant's claims.

The tenant applied for \$25,000.00, stating that it was low, since she knew the maximum that she could apply for at the RTB was \$35,000.00. The tenant did not provide a breakdown for the \$25,000.00 and why she chose that amount. She did not provide documentary evidence to show that she missed time off work or that she lost any wages. She provided a medical note from her doctor stating that the tenant's symptoms cannot be definitively linked to the indoor mold and fungus that the tenant complained about, even if future testing is done. I find that the tenant failed to provide sufficient evidence that any mold that may have been present inside the rental unit caused her health problems or other losses, for which the landlord is responsible.

Conclusion

To give effect to the settlement reached between the parties, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on February 1, 2020. The tenant must be served with this Order. Should the tenant fail to comply, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's 1 Month Notice, dated October 28, 2019, is cancelled and of no force or effect.

The remainder of the tenant's application is dismissed without leave to reapply.

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 06, 2020

Residential Tenancy Branch