



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, MNR, MNSD, CNR, MNDC, OLC, and FF

Introduction

This hearing was scheduled as a result of an Application for Dispute Resolution filed by the Landlord and an Application for Dispute Resolution filed by the Tenant.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided in relation to the Landlords' Application for Dispute Resolution, are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution, are whether the Notice to End Tenancy served by the Landlord should be set aside; whether an Order requiring the Landlord to comply with the *Act* is necessary; whether the Tenant is entitled to a monetary Order for money owed or for compensation for damage or loss under the *Act*, *Regulation*, or tenancy agreement; to the return of her security deposit; and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 67, and 72 of the *Act*.

Background and Evidence

The Landlords and the Tenant have a written tenancy agreement that indicates this tenancy began on March 01, 2006, which is signed by the Tenant and a co-tenant. The Tenant stated that she did not actually move in until March 25, 2006. The female Landlord initially stated that the tenants moved in on March 25, 2008 and subsequently stated that they moved in on March 22, 2008. Both parties agree that the delay in occupancy was due to the fact that the rental unit was being renovated.

The tenancy agreement shows that the tenants paid a security deposit of \$500.00 on February 18, 2006. The Landlords and the Tenant agree that the monthly rent throughout the tenancy has been \$995.00, and that the tenants were required to pay for utilities.

The Landlords submitted a letter from the co-tenant, dated July 12, 2008, in which the co-tenant advises the Landlords that he will be vacating the rental unit on August 31, 2008. The letter indicates that the Tenant and her children intended to continue to occupy the rental unit. The Landlords also submitted a letter, dated July 25, 2008, in which she advised the Landlord that she and her children intend to continue to occupy the rental unit.

The Landlords argue that the letter from the co-tenant ended this tenancy, effective August 31, 2008. They argue that the tenants are jointly and severally liable, and that the co-tenant can end the tenancy for both parties. The Tenant argued that she was unaware of the letter sent by the co-tenant, and that her letter to the Landlords clearly advised them that she was not ending the tenancy.

The Landlords and the Tenant agree that the Landlords attempted to enter into a new tenancy agreement with the Tenant, effective September 01, 2008. The Landlords and the Tenant agree that the parties verbally agreed to enter into a new tenancy agreement that required the Tenant to pay monthly rent of \$1,100.00, at which time the Tenant signed a new Application for Tenancy.

The female Landlord stated that on July 27, 2008, she telephoned the Tenant and advised her that the rent would be \$1,200.00 per month, which the Tenant agreed with. The Tenant stated that she did not agree to pay monthly rent of \$1,200.00, and that the Landlord changed the Application for Tenancy agreement that she signed on July 26, 2008 without her consent. The Landlords and the Tenant agree that the Tenant did not sign the tenancy agreement that required her to pay monthly rent of \$1,200.00.

The Landlords and the Tenant agree that the Tenant did give the Landlords a cheque for \$995.00 to pay for rent for September of 2008.

The Landlords and the Tenant agree that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of September 12, 2008, was served on the Tenant's father on September 03, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$1,200.00 within five days after the Tenant is assumed to have received the Notice.

The Tenant stated that she intends to vacate the rental unit on September 30, 2008 and the Landlord stated that she wanted the Tenant to vacate the rental unit on September 30, 2008.

The Landlords are seeking compensation, in the amount of \$55.18, for money which was credited to the water bill by the Landlords, which was subsequently used by the Tenant to pay their water fees. The female Landlord stated that the previous tenant left a water bill in the amount of \$55.18 at the end of her tenancy. The Landlords paid \$55.20 towards this debt on May 01, 2006 and the previous Tenant paid \$55.18 towards the debt on May 29, 2006, leaving a credit balance of \$55.20. The Landlords submission is supported by a water bill and account ledger from the District of Saanich. The account ledger shows that the credit of \$55.20 was applied to a water bill from February 17, 2006 to June 20, 2006.

The Tenant contends that they paid for water usage between February 17, 2006 to March 25, 2006, which was a period that they did not reside in the rental unit. The account ledger from the District of Saanich shows that there was a fixed monthly charge of \$11.20 for the period between February 17, 2006 and June 20, 2006. The account ledger from the District of Saanich shows that there were water fees of \$40.82 for the period between February 23, 2006 and June 12, 2006.

The Tenant is seeking compensation, in the amount of \$1,704.80, for the cost of painting the rental unit at the beginning of the tenancy. The Tenant contends that the Landlords paid for the paint and that her co-tenant painted the rental unit, and she is seeking compensation for his labour. The Tenant stated that she understood they would be compensated for their labour. The Tenant submitted no documentary evidence to show that the Landlords agreed to compensate the co-tenant for labour, or that there was an effort to collect payment after the rental unit was painted in 2006.

The Tenant submitted photographs, marked #6 and #7, which she contends show that the rental unit required painting at the beginning of the tenancy. In my view, these photographs depict a newly painted bathroom that still needs to be finished, either with tile, a mirror or similar finishing.

The Tenant's witness stated that he allowed the co-tenant to purchase paint on his business account, and that he loaned the co-tenant tools to paint the rental unit.

The Landlords agreed that the co-tenant helped the Landlord paint the rental unit but they contend that there was never an agreement that he would be compensated for his labour.

The Tenant is seeking compensation, in the amount of \$275.00, for replacing an exterior cement step. The Landlords and the Tenant agree that the Landlords did not authorize the Tenant to replace the step.

At the hearing the Tenant stated that she is seeking compensation for the 25 days in March of 2006 that they did not occupy the rental property. The Tenant stated that they

paid rent for March of 2006 but were unable to move into the rental unit until March 25, 2008 because it was being renovated. There is nothing in the Tenant's Application for Dispute Resolution package that indicates she is seeking compensation for rent from March of 2006.

Analysis

There is some disagreement regarding the date the Tenants moved into the rental unit. The Landlords initially agreed with the Tenant that occupancy began on March 25, 2008, but subsequently stated that they believed occupancy began on March 22, 2008. As the Tenant appeared to have a better memory in this regard, I find that occupancy began on March 25, 2006.

I find that this was a co-tenancy. When co-tenants have entered into a periodic tenancy, and one tenant gives notice to end tenancy, the tenancy ends on the effective date of that notice, and all the tenants must move out, even where the notice has not been signed by all of the tenants. In these circumstances, I find that the co-tenant end this tenancy, effective August 31, 2008.

I find that the Tenant verbally agreed to enter into a new tenancy agreement on September 01, 2008, which required her to pay monthly rent of \$1,100.00. I find there is insufficient evidence to establish that she agreed to pay \$1,200.00 per month. Therefore, I find that the Tenant was required to pay monthly rent of \$1,100.00 for September of 2008.

As the Tenant has already paid the Landlords \$995.00 in rent for September of 2008, I find that the Tenant owes another \$105.00 in rent for September.

I find that the Notice to End Tenancy that was served on the Tenant is inaccurate, as it incorrectly advises that the Tenant that the Notice will be automatically cancelled if the Tenant pays \$1,200.00. As the monthly rent agreed upon by these parties was \$1,100.00, and the Tenant has already paid \$995.00, I find that the Notice should have advised the Tenant that the Notice would be automatically cancelled if the Tenant paid \$105.00.

As the Notice incorrectly stated the amount the Tenant must pay within five days after receiving the Notice in order to automatically cancel the Notice, I find that the Notice does not comply with section 52 of the *Act*. I find that the incorrect information is an integral part of the Notice and that the incorrect information significantly affects the substance of the form. I find that the Notice to End Tenancy is of no effect as it does not comply with section 52 of the *Act*, and I therefore grant the Tenant's application to set aside the Notice, and I dismiss the Landlords' application for an Order of Possession for Unpaid Rent.

Based on the oral evidence of both parties, I find that the Landlords and the Tenant mutually agreed to end this tenancy on September 30, 2008. As the parties mutually agreed to end this tenancy on September 30, 2008, I find that the Landlord is not entitled to compensation for loss of rental income for October of 2008.

I find that the Tenant did benefit from the credit balance of \$55.20 that was applied to the water bill by the Landlords on May 01, 2006. Conversely, I find that the Tenant overpaid the fixed monthly charge on the water bill between February 17, 2006 and March 25, 2006 by \$3.24, which I calculated at a rate of \$0.09 per day for 36 days. I also find that the Tenant overpaid the water usage fees between February 23, 2006 and March 25, 2006 by \$11.47, which I calculated at a rate of \$0.37 per day for 31 days. In total, I find that the Tenant overpaid the water bill by \$14.71. After deducting the overpayment from the amount paid by the Landlord, I find that the Tenant owes the Landlord \$40.49 for water fees.

I find that there is insufficient evidence to establish that the Tenant is entitled to compensation for painting the rental unit. All parties agree that the rental unit was painted at the beginning of the tenancy and that the Landlords paid for the paint. The Tenant contends that there was an agreement that the co-tenant would be compensated for painting the rental unit and the Landlords contend that they did not agree to compensate him for labour. In situations where two parties do not agree that they had a verbal contract, the onus is on the person making the claim for damages to establish that there was a verbal contract. In the circumstances before me, I find that the Tenant submitted insufficient evidence to establish that the Landlords agreed to compensate the tenants for labour for painting and I therefore dismiss the Tenant's application for costs associated to painting the rental unit.

I find that the Tenant is not entitled to compensation for replacing the exterior cement step, because they did not have authorization from the Landlord to make the repairs. As the Landlord did not ask the tenants to replace the step, and there is insufficient evidence to establish this was an emergency repair, as defined by section 33 of the *Act*, I find that the Landlord is not liable for the cost of this replacement. I therefore dismiss the Tenant's application for the cost of replacing the step.

I find that the Tenant did not properly notify the Landlords that she was seeking compensation for rent from March of 2006, as she is required to do by section 59(2)(b) of the *Act*. As the Landlords were not properly notified of the Tenants intent to seek compensation for rent from March of 2006, I hereby dismiss this portion of the Tenant's Application for Dispute Resolution, with leave to reapply on this specific matter.

I find that the Applications for Dispute Resolution submitted by both parties have merit, and I therefore find that they are both responsible for their own costs of filing for Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$145.49, which is comprised on \$105.00 in unpaid rent and \$40.49 in compensation for money the Landlord's applied to the Tenant's water bill. The Landlords are hereby authorized to retain this amount from the Tenant's security deposit. The Landlords must return the remainder of the Tenant's security deposit, in the amount of \$354.51, plus interest on the original amount, in the amount of \$15.35.

Based on these determinations I grant the Tenant a monetary Order for the amount of \$369.86. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: September 26, 2008
