



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, MNSD, MNDC, CNR, MNR, LAT, RR, FF

Introduction

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, as they relate to the Landlord's 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; for a monetary Order for loss of rent for the month of September; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Landlord's Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

At the hearing the Landlord withdrew his application for an Order of Possession, due to the fact that the Tenants have vacated the rental unit.

The issues to be decided, as they relate to the Tenants' Application for Dispute Resolution, are whether the Notice to End Tenancy should be set aside and whether the Tenants are entitled to a monetary Order for the cost of repairs; to a rent reduction; to a monetary Order for compensation for damages or loss; to authorization to change the locks on the rental unit; and to recover the filing fee from the Landlord for the cost of the Tenants' Application for Dispute Resolution, pursuant to sections 33, 46, 65, 67, 70, and 72 of the *Residential Tenancy Act (Act)*.

At the hearing the Tenants withdrew their application to set aside the Notice to End Tenancy, for a rent reduction and to change the locks to the rental unit, as they have vacated the rental unit. The Tenants also withdrew their request for a monetary Order for the cost of repairs, as they did not pay for any repairs.

Background and Evidence

The Landlord and the Tenants agree that the Tenants paid a security deposit of \$625.00 on February 01, 2008 and that the Tenants are required to pay monthly rent in the amount of \$1,250.00.

The Landlord and the Tenants agree that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of August 18, 2008, was personally served on the Tenant on August 07, 2008. The parties also agree that the Tenants vacated the rental unit on August 31, 2008.

The Landlord and the Tenants agree that the Tenants did not pay rent for August of 2008.

The Tenants stated that they did not pay rent because they were without hot water between July 02, 2008 and August 16, 2008. The Tenants are seeking compensation for being without water during this period of time, although they did not specify how much compensation they would like.

The Landlord agreed that the Tenants were without hot water between July 02, 2008 and August 16, 2008, due to major repairs at the residential complex. He stated that he offered the Tenants \$200.00 in compensation for being without hot water during this period; that the Tenants refused to agree to this amount of compensation; and that the Tenants suggested they should only pay for storing their property in the rental unit during that period. The Landlord argued that storage for that amount of space would be \$800.00 per month, but he felt they should pay more than that as they were able to live in the rental unit.

The Landlord is seeking compensation, in the amount of \$1,250.00, for loss of rent from September, due to the fact that the Tenants did not give proper notice to end the tenancy.

Analysis

Section 26(1) of the *Act* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the Act to deduct all or a portion of the rent. In the circumstances before me, I find that Tenants were not authorized by the director to deduct any portion of the rent and that they did not have grounds under the Act to deduct any portion of their rent. I therefore find that the Tenants owe rent for August of 2008, in the amount of \$1,250.00.

I find that the Landlord ended this tenancy when he served the Tenants with a Notice to End Tenancy on August 07, 2008. I find that the Tenants were not required to serve the Landlord with notice that they were ending the tenancy, as the Landlord had already ended it. I therefore find that the Landlord is not entitled to compensation for loss of rent for September of 2008, as he had the opportunity to find new tenants for September.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$630.69, in partial satisfaction of his monetary claim.

I find that the Tenants were without hot water for a period of 46 days during this tenancy. I find that hot water is an integral part of a tenancy, and that being without hot water significantly reduces the value of the tenancy. I find that the Tenants should be compensated, at a rate of \$10.00 per day, for being without hot water, for a total of \$460.00. I find this to be reasonable compensation for the inconvenience of not being able to shower or use hot water for cleaning purposes.

I find that the applications of both parties have merit, and I therefore find that they are each responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has established a monetary claim, in the amount of \$1,250.00, for unpaid rent from August of 2008. I also find that the Tenants have established a monetary claim, in the amount of \$460.00, for being without hot water for a period of 46 days. After deducting the Tenant's monetary claim from the Landlord's monetary claim, I find that the Tenants owe the Landlord \$790.00.

The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$630.69, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$159.31. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: September 09, 2008
