



Dispute Resolution Services

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

DECISION

Dispute Codes: OPR, OPC, MNR, MNDC and FF

Introduction

These applications were brought by both the landlord and the tenant.

By application of January 15, 2009, the landlord seeks an Order of Possession pursuant to a 30-day Notice to End Tenancy for cause served on December 9, 2008 and a 10-day Notice to End Tenancy for unpaid rent served on January 2, 2009. The landlord also sought a Monetary Order for the unpaid rent, damage to the rental unit and filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance.

By application of December 22, 2008, the tenants seek to have the Notice to End Tenancy for cause set aside, orders for repairs, emergency repairs, services required by law and recovery from the landlord of their filing fee for this proceeding..

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession on either of the notices and the effective date, and whether a Monetary Order is due, the amount, and if the filing fee should be included.

It further requires a decision on whether the tenants are entitled to orders for repairs and services and damages and recovery of their filing fee.

Background and Evidence

This tenancy began December 1, 2008. Rent is \$775 per month and the landlord holds a security deposit of \$387.50 paid on December 1, 2008.

During the hearing, the landlord gave uncontested evidence that the Notice to End Tenancy had been served when the tenant had not paid the rent for January 2009. At the time of the hearing, it remained unpaid.

Analysis re Notice for unpaid rent

Section 46 of the *Act* which deals with notice to end tenancy for unpaid rent provides that a tenant may pay the overdue rent or make application for dispute resolution within five days of receiving the notice. If the tenant does neither, they are presumed to have accepted that the tenancy ends on the date stated on the notice.

In this matter, the tenant has not paid the rent and has not made application to dispute the notice for the unpaid rent, although the tenant has applied to dispute the notice for cause.

Therefore, the landlord requested, and I find she is entitled to, an Order of Possession in support of the Notice to End Tenancy for unpaid rent to take effect at 1 p.m. on January 31, 2009. The parties were advised of that during the hearing.

Having made that determination, I find that it would be moot to examine the Notice to End Tenancy for cause except to the extent it relates to monetary claims by both parties. As the end of the tenancy is imminent, I also find it unnecessary to consider issuing orders for repairs and services as requested by the tenant.

Evidence re Monetary Claims

This dispute arose over problems with the heating system in the rental unit.

According to the landlord, the tenant was advised before taking occupancy that the building was experiencing some problems with the heating system which was being worked on.. A relay had been repaired on November 26, 2008 but subsequently required replacement on December 5, 2008. The tenant denies having been so advised.

The parties agree that the tenants called the landlord on December 2, 2008 to complain that there was no heat. The landlord had been unable to remedy the matter but was awaiting the plumber who was coming to deal with the relay. In the meantime, the tenant attempted to adjust the hot water radiator on December 4, 2008, damaged the valve and caused a leak . The landlord provided catch pans, but claims the tenant did not empty them resulting in water intrusion onto the carpets.

The landlord further claims that a cleaner attempted several times to enter the rental unit to vacuum the water off the carpets but was unable to gain admittance in spite of a previous approval by the tenant. He was finally able to get in to the unit on December 9, 2008 to vacuum and returned on December 23, 2008 to shampoo the carpets. Total cost claimed and supported by receipt is \$127.50

A plumber was able to attend on December 12, 2008 and installed new baseboard hot water radiators at a receipted cost of \$1,077 including materials, labour and tax. The landlord stated that only the cosmetic covers remained uninstalled and the heating system worked.

The landlord submitted letters from three other tenants attesting to the fact that they had adequate heat at the material times.

The tenant claims that the heat did not work to the day of the hearing.

Analysis

It was extremely challenging to make findings on this application due to constant and sustained interruption of the landlord's testimony by the female tenant.

However, I find that the tenants did not pay the rent for January and award the landlord \$775 on that ground in addition to the previously noted Order of Possession.

I find that the parties agree that the unit was having heating problems to December 12, 2008 and I award the tenant a rent reduction of \$300 for that and subsequent claimed problems with the heat.

I find that the tenant did break the valve on the baseboard hot water radiator causing the leak and he is responsible for the total cost of the cleanup at \$127.50.

I further find the landlord may have been premature in renting the unit with known heating problems and that was a contributing factor to the tenant breaking the valve. In addition, I find that the heaters were aged and should be depreciated accordingly.

Therefore, I find that the parties should split equally the cost of replacement of \$1,077.12 or \$538.56 each. The tenant made claim for four days lost work at \$250 per day but provided no evidence to show that he actually took four days off work or that his doing was to accommodate anything to do with the rental unit. This claim is dismissed.

I find that the parties should each remain responsible for their own filing fee.

In summary, I find that the tenant owes the landlord authorization to retain the security deposit, an amount calculated as follows:

January rent	\$ 775.00
Cost of cleaning, shampooing carpets	125.50
One-half of hearing repair cost	538.56
Sub total	\$1,439.06
Less \$300 rent reduction	- 300.00
Less retained security deposit	- 387.50
Less interest	- 0.49
TOTAL	\$751.07

Conclusion

Thus, the landlord's copy of this decision is accompanied by an Order of Possession effective at 1 p.m. on January 31, 2009 and a Monetary Order for \$751.07.

The Order of Possession is enforceable through the Supreme Court of British Columbia and the Monetary Order is enforceable through the Provincial Court of British Columbia.

The landlord remains at liberty to make application for any damage to the rental unit as may be ascertained at the conclusion of the tenancy.

January 26, 2009

Dispute Resolution Officer