



Dispute Resolution Services

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

Decision

Dispute Codes: CNC, CNR, OLC, MNDC, MNR, MNSD, OPC, OPR, FF

Introduction

This hearing dealt with 4 applications: 1) three variously from the tenant for cancellation of notices to end tenancy, in addition to an order to comply with the *Act*, compensation for loss, and recovery of filing fees; 2) one from the landlord for an order of possession, a monetary order for unpaid rent, compensation for loss, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee. Both parties and the landlord's agent participated in the hearing and gave affirmed testimony.

Issues to be Decided

- Whether the landlord is entitled to an order of possession
- Whether either or both parties are entitled to a monetary order under the *Act*

Background and Evidence

The reconvened conference call hearing was punctuated by the loud background noise from barking dogs at the tenant's end, and at the landlord's end, by her numerous interjections during testimony being conveyed by her interpreter.

There are 2 periods of tenancy:

1) Pursuant to a written tenancy agreement the term of the first tenancy was from January 1, 2008 to January 1, 2009. Rent in the amount of \$1,800.00 was payable in advance on the first day of each month. At the outset of tenancy, the landlord collected a security deposit in the amount of \$1,800.00; it is not clear whether the intent was that half of this amount was security deposit while the other half was pet deposit.

Notwithstanding, on both tenancy agreements and in other documents submitted by the parties this amount is referred to as security deposit.

The tenant states that during this period of tenancy she issued a cheque to the landlord dated July 1, 2008 in the amount of \$2,500.00. This cheque was for payment of rent for July and part of August 2008. The tenant states that she and the landlord verbally agreed that the balance of rent to the end of August 2008 in the amount of \$1,100.00 would be paid on August 15, 2008.

The tenant states that when the parties met on August 18, 2008 the landlord refused to accept the payment of \$1,100.00. Instead, the tenant says the landlord informed her that as the government was going to seize the property, the landlord would be ending the tenancy. As the tenant was suspicious of the landlord's claim that the property was to be seized, on August 19, 2008 the tenant met with the landlord and requested more specific information. In response, the landlord stated that she required the tenants to vacate the unit because she wished to use the property for her own purposes. After further discussion the landlord informed the tenant she would withdraw the notice to end tenancy and, instead, negotiate a new tenancy agreement.

For her part, the landlord takes the position that she wished to evict the tenants because of their failure to pay the full rent for August and September 2008. In one of her written submissions the landlord states that a settlement of that dispute was achieved; in the result, the landlord withdrew the notice to end tenancy and the hearing scheduled for September 23, 2008 was cancelled. The parties then created a new residential tenancy agreement to be effective from September 15, 2008.

In relation to the first tenancy, as above, the tenant seeks compensation for \$1,065.73 which she claims was payable to Terasen Gas for heating. While not the case in the second tenancy agreement, the tenant points out that heat is included in the rent in the first tenancy agreement. An overdue notice for this amount and correspondence from a

collection agency were submitted into evidence, however, there was no evidence to support the tenant's assertion that she paid a deposit to Terasen for \$300.00.

2) Pursuant to a written tenancy agreement the term of the second tenancy is from September 15, 2008 to September 15, 2009. Rent in the amount of \$1,800.00 is payable on the 15th day of each month. The tenant paid \$1,800.00 for rent in cash for the period September 15 to October 15, 2008. A receipt was submitted into evidence in regard to this payment and during the hearing the parties agreed that rent had been paid in full to mid-October 2008.

In contrast to the first tenancy agreement, the new tenancy agreement includes a provision that the landlord will use the backyard adjacent to the unit, and that "the property will be fenced from the house along the driveway to the barn and across to the property line and back to the house before any work gets done on the proposed blueberry farm."

Subsequently, there was a dispute between the tenant and a contractor who attended the site to undertake work for the landlord in the backyard in late September 2008. The dispute revolved around whether the contractor was entitled to access the backyard prior to the construction of the fence. The dispute, which involved police being called, led to the landlord's issuance of a 1 month notice to end tenancy for cause dated September 30, 2008. The landlord seeks compensation for costs associated with expenses she says were incurred when the contractor was on-site but was unable to complete the work as scheduled. As for the tenant, she alleges that the landlord breached the tenancy agreement by not having a fence constructed prior to the contractor attending the site; the tenant also seeks compensation for the loss of right to quiet enjoyment over several days while the contractor worked and the tenant kept her dogs indoors.

The tenant issued two rent cheques in the amount of \$1,800.00 which were post-dated, October 17 and November 15, 2008. These cheques were unable to be cashed by the

landlord due to insufficient funds for the first and closure of the account for the second. Arising from this the landlord issued two 10 day notices to end tenancy for unpaid rent dated, respectively, October 16 and 24, 2008.

The parties agreed that the tenant would make four installment payments toward the full security deposit of \$1,800.00 by way of post-dated cheques, each in the amount of \$450.00. However, the tenant's cheques post-dated October 15 and November 15, 2008 were unable to be cashed by the landlord due either to insufficient funds or closure of the account. After the first of these cheques failed to clear, the landlord issued a 1 month notice to end tenancy for cause dated October 24, 2008; the reason given for its issuance was that the security deposit was not paid within the 30 days required by the tenancy agreement.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served variously with notices to end tenancy for unpaid rent and for cause. The tenant disputed these notices by way of applications for dispute resolution.

Following careful consideration of the evidence before me and the testimony of the parties, I find that the first period where rent is still outstanding is from October 16 to November 15, 2008. In the result, I accept the landlord's application for an order of possession arising from the 10 day notice to end tenancy for unpaid rent dated October 24, 2008. Accordingly, I find that the landlord is entitled to an order of possession effective December 31, 2008.

As for the monetary order, I find the landlord has established a claim as follows:

\$1,800.00 - unpaid rent from October 16 to November 15, 2008;

\$1,800.00 – unpaid rent from November 16 to December 15, 2008;

Total claim: \$3,600.00

I dismiss the landlord's claim for expenses associated with the contractor for the following reasons: first, I find she breached the tenancy agreement by not having the fence construction completed before bringing in the contractor and, second, while the landlord has presented an invoice from the contractor, there are no receipts nor is there a cogent argument in support of any financial loss that she may have incurred as a result of the contractor's inability to proceed with work as originally planned. I also dismiss the landlord's application for recovery of the filing fee, preferring instead that the parties each absorb the cost of one filing fee.

As for the tenant's application for a monetary order, I find she has established a claim as follows:

\$1,065.73 - Terasen Gas (shown as included in rent for the first tenancy)

\$ 300.00 – compensation for \$60.00 x 5 days' loss of the right to quiet enjoyment (per diem calculated as \$1,800.00 ÷ 30 x 5)

\$ 100.00 – recovery of 2 of the 3 filing fees

Total claim: \$1,465.73

Offsetting the amount due to the landlord by the amount due to the tenant, I find the landlord is entitled to a monetary order in the amount of \$2,134.27 (\$3,600.00 - \$1,465.73). Accordingly, I grant the landlord a monetary order under section 67 of the *Act* for \$2,134.27. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Evidently no security deposit was ever collected with respect to the second period of tenancy. As for the first period of tenancy, there is no documentary evidence or testimony that addresses how the parties dealt with it following the replacement of the first agreement by the second agreement. Specifically, it is not apparent that it was returned to the tenants by the landlord, nor is it clear whether the parties agreed that it would be applied to some portion of the rent for August or September 2008.

Finally, the parties must still resolve the matter of rent which becomes due on December 15, 2008 for the latter half of December, prior to the date of December 31, 2008 when the order of possession takes effect.

Conclusion

I hereby issue an order of possession in favour of the landlord effective on or before **1:00 pm, December 31, 2008**. This order must be served on the tenants. Should the tenants 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.

I hereby grant the landlord a monetary order under section 67 of the *Act* for **\$2,134.27**. This order must be served on the tenants and may be filed in the Small Claims Court and enforced as an order of that Court.

DATE: December 3, 2008

Dispute Resolution Officer