



Dispute Resolution Services

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

DECISION AND REASONS

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

Introduction:

This hearing dealt with cross applications by the parties. The landlord is seeking an Order of Possession and a monetary claim related to non-payment of rent by the tenant. The landlord also seeks to retain the tenant's security deposit plus interest in partial satisfaction of her claim. The tenant is seeking to have the Notice to End Tenancy set aside, is requesting an Order to change the locks to her rental unit, and is seeking compensation for loss of quiet enjoyment to her rental unit.

Both parties appeared for the hearing and were provided the opportunity to be heard and to respond to the evidence of the other party.

Issues to be Determined:

Should the 10 day Notice to End Tenancy be upheld? Is the landlord entitled to a monetary claim related to non-payment of rent? Should the tenant receive an Order allowing her to change the locks to the rental unit? Should the tenant be compensated for loss of quiet enjoyment of her rental unit?

Background and Evidence:

This tenancy began on October 1, 2007 for the monthly rent of \$850.00 and a security deposit of \$425.00. The relationship between the landlords and the tenant appeared to be good until the landlord began some renovations in their portion of the property and in the tenant's suite. The circumstances quickly deteriorated as the parties had disputes about the nature of the work and its interference on the tenant's quiet enjoyment.

On January 1, 2009 the tenant failed to pay the rent owed of \$850.00. The tenant was served with a 10 day Notice to End Tenancy which she has disputed under her application. However, the tenant has not paid the rent owed.

The tenant had several issues regarding the landlords' renovations and insinuated that the renovations contributed to her inability to find employment. The tenant argued that she did not receive proper notice when the landlords required access during the renovations and generally felt that the landlords' failed to properly communicate with her the nature and extent of the renovations. The tenant was unable to provide specific dates related to when she was allegedly unreasonably disturbed or when the rental unit was accessed without her permission.

The landlords deny the tenant's allegations stating that they always provided the tenant with notice when work would be done in her unit and making new arrangements when dates did not work for the tenant. The landlords stated that all work was scheduled generally during the week days during the hours of 8 to 5. These times were when the tenant was away at work.

The landlords' submitted evidence of a confrontation that allegedly occurred between the hired contractors and the tenant on November 13, 2008. The landlords stated that the work was originally scheduled for November 14, 2008; however, the tenant requested that the work be moved to another day because she would be home on the 14th. The landlords stated that they changed the date to the 13th; however, the tenant had called in sick that day and was home when the contractors arrived. Apparently the tenant refused to allow the contractor to access the rental unit to complete the scheduled work.

The landlords are seeking an Order of Possession on the basis that the tenant has failed to pay the rent. The landlords are also seeking a monetary claim for the unpaid rent of \$850.00 and are requesting to retain the tenant's security deposit plus interest in partial satisfaction of that claim.

Analysis:

I grant the landlords' application and grant an Order of Possession effective **two (2) days** after it is served upon the tenant. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The tenant acknowledged that she failed to pay the rent and is currently unable to pay the rent owed. Based on the evidence before me I accept that the landlords' have established a monetary claim for the sum of \$900.00 including the recovery of the \$50.00 filing fee paid for this application. From this sum I Order that the landlords may retain the tenant's security deposit plus interest of \$433.01 in partial satisfaction of this claim. I grant the landlords a monetary Order for the remaining balance owed of **\$466.99**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I deny the tenant's application. I do not accept the tenant's evidence that she has lost quiet enjoyment of the rental unit. Rather, I accept that the tenant has been inconvenienced by the renovations. I accept the landlords' evidence that they contacted the tenant when required to complete work and that the work was generally scheduled for when the tenant was away at work.

I find that the tenant is not seeking compensation from the landlords because of the change in her own circumstances. For example, the tenant lost her employment on November 22, 2008 and was therefore at her rental unit when normally she would have been away. This increase in disturbance was not due to a breach of the tenancy agreement but due to the change in the tenant's personal circumstances. I also find that the tenant had expectations of the landlords that were unreasonable. For example, she was attempting to attribute transportation difficulties she experienced during the extreme weather conditions in December 2008 to the landlords' failure to properly

disclose how winter weather conditions would affect her ability to travel or the landlords' failure to offer the tenant transportation. These expectations are not encompassed within the legislation.

I find that the tenant has failed to establish her monetary claim. I find that the landlords' provided proper notice to the tenant and reasonably re-scheduled work at the tenant's request. I find that the landlords did not breach the tenant's right to quiet enjoyment of her rental unit and dismiss her application.

Conclusion:

I dismiss the tenant's application. I grant the landlords' application and have issued the landlords an Order of Possession and a monetary Order due to the tenant's failure to pay rent.

Dated January 23, 2009.

Dispute Resolution Officer