



Dispute Resolution Services

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

DECISION

Dispute Codes: *CNR, MNDC, LAT, RR*

Introduction

This hearing dealt with an application by the tenant for an order to cancel the notice to end tenancy for unpaid rent, pursuant to Section 46 of the *Residential Tenancy Act*. The tenant has also applied for compensation for damage or loss under the Act and is seeking a monetary order in the amount of \$10,000 for pain and suffering and other related expenses. The tenant has applied for an order to authorize the tenant to change the locks to the rental unit and to reduce rent for repairs.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached

Issues

- Does the landlord have cause to end the tenancy?
- Is the tenant entitled to \$10,000 that he is claiming as compensation for damages under the Act?
- Is the tenant entitled to a reduced rent and authority to change the locks to the rental unit?

Background and Evidence

Based on the sworn testimony of both parties, the facts are as follows:

The tenancy started on September 01, 2008. The monthly rent is \$700.00 payable in advance on the first day of each month. The tenant paid a security deposit of \$350.00 on September 01, 2008. The landlord served the tenant with a 10 day notice to end tenancy for unpaid rent on December 02, 2008, when the tenant failed to pay the complete rent for December.

The tenant testified that he had contracted a skin disease from the landlord and that his dog had contracted an infection from the landlord's cat. The tenant has submitted into

evidence, vet's bills, and receipts for gas, over the counter medication, laundry soap, groceries and other miscellaneous items and stated that he had incurred these expenses visiting the doctor and the vet. The tenant stated that there were problems in the suite which included cracks around the door, holes in the bath mats and an inoperative gas stove and is claiming a total of \$2,900 which is made up of \$200.00 off the rent for the months of September to December and additional compensation in the amount of the equivalent of three months rent. The tenant stated that the landlord used the shared laundry when he was away and utilized some of the tenant's laundry soap and other grocery items. The tenant has submitted a list of the tenant's supplies that the tenant states the landlord utilized in the tenant's absence, for a total of \$566.53.

The tenant has applied for compensation in the amount of \$10,000.00 which consists of the following:

1.	Moving Costs	\$1000.00
2.	Treatment for the dog	\$100.00
3.	Problems in the suite	\$2,900.00
4.	Supplies	\$566.53
5.	Pain and Suffering	\$5433.47
	Total	\$10,000.00

Analysis

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date. The tenant received the notice to end tenancy on December 02, 2008 and did not pay overdue rent or dispute the notice within five days of receiving the notice. Accordingly, the notice to end tenancy is upheld and the tenant's application to cancel the notice to end tenancy is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a

landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession effective two days after service on the tenant. Should the tenant 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.

It is important for the claimant to know that to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the claimant must satisfy each component of the test below:

Test For Damage and Loss Claims

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenant's claim for compensation does not meet all the components of the above test. The tenant did not submit any evidence to support the tenant's claim of problems in the suite nor did the tenant submit a doctor's note to link the skin disease that the tenant suffered from, to the landlord.

I find that the tenant is not entitled to a reduction in rent for the term of the tenancy nor is the tenant entitled to three months rent as compensation for being served a notice to

end tenancy. I find that the tenant has not established any part of his monetary claim for \$10,000.00; hence the tenant's claim for compensation in this amount is dismissed.

Conclusion

The notice to end tenancy is upheld and the tenant's application to cancel the notice to end tenancy is dismissed. The landlord is granted an order of possession effective two days after service on the tenant. Since the tenancy will end, the tenant's application for authorization to change the locks to the rental unit and to reduce rent is no longer relevant and hence is dismissed.

Dated January 05, 2009.
