



# Dispute Resolution Services

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

## Decision

### Dispute Codes:

MT

CNR

MNDC

FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated January 7, 2009 and effective January 17, 2009. The tenant's application also requested: a monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

### Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Unpaid was warranted. The questions to be answered include:
  - Did the tenant violate the Act by failing to pay rent when rent was due?
  - Did the tenant have a valid reason under the Act not to pay the rental amount in full?

- Did the tenant pay the rent in full within 5 days of receiving the Notice to End Tenancy?
- Whether the tenant is entitled to monetary compensation under section 67 of the Act for damages or loss. This determination is dependant upon answers to the following questions:
  - Has the claimant presented proof:
    - Of the existence and monetary value of the damage or loss
    - That the cause of the damage or loss was the respondent's actions in violation of the Act or the tenancy agreement

The burden of proof is on the landlord/respondent to justify the reason for the Ten-Day Notice. The burden of proof is on the applicant to prove the remainder of the claims and requests contained in the tenant's application..

**Preliminary matter:** Request by Applicant to allow the tenant more time to make the application

In the application, the tenant requested more time to make the application. After receiving a Ten-Day Notice to End Tenancy for Unpaid Rent, the tenant has 5 days in which to pay the rent or make application to dispute the notice. The landlord posted the Notice to End Tenancy on January 7, 2009 which under the Act is deemed served in 3 days. The tenant's application was dated January 13, 2009, but was processed on January 16, 2009. It was determined to proceed with this application.

### **Background and Evidence**

Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy dated January 7, 2009 and a handwritten statement outlining the circumstances under which the tenant chose not to pay the rent for January 2009 and details regarding the tenant's claim for compensation in the

amount of \$2,500.00. The tenant testified that the unit was flooded on December 22, 2008 and that the landlord had not acted in a timely manner to rectify the problem. The tenant testified that the landlord fixed the plumbing problem on December 24, 2008 but that the re-carpeting has not been done to date and the tenant has been forced to live with a cement floor and the loss of her bedroom. The tenant testified that she was required to move all of her possessions to clear the room so that the carpeting could be done but had difficulty due to a shoulder injury and the fact that she had no place to put her things. The tenant stated that she lost several days of work because of the issue with her unit. The tenant testified that she was confused as to what to do and what the landlord required. The tenant felt that the landlord could have re-carpeted one-half of the room and then she could move her things to the other side of the room so that the rest of the carpeting could be done. But the landlord failed to proceed with the work.

In regards to the failure to pay rent, the tenant testified that she presumed that the rent would be waived, given the flood at Christmas time and all of the disruption she endured. The tenant testified that upon receiving the Ten-Day Notice, she contacted the landlord to ask whether it was just a "formality" and did not receive a clear answer. The tenant did not pay the outstanding rent for January but applied for dispute resolution instead. The tenant testified that she then paid the rent for the month of February and received a receipt that indicated that the rent was being accepted without re-instating the tenancy.

The tenant is requesting that the Notice be cancelled and payment of compensation for the \$525.00 rent owed for January, a rebate of \$500.00 for rent paid for February 2009, lost wages totaling \$379.00 and loss of comfort and enjoyment a \$16.00 per day totaling \$416.00.

The landlord submitted into evidence a copy of a letter to the tenant dated January 28, 2009 and copies of invoices for plumbing repairs. The landlord testified that there was a serious flood on December 22, 2008 and that the landlord acted immediately to have the repairs done and was prepared to have new carpeting installed without delay.

However, the tenant first insisted on using a shop-vac on the wet carpet. The landlord supplied the shop-vac which did not rectify the problem. The landlord testified that they then assisted the tenant by removing the wet carpet, however the replacement work could not proceed until the tenant removed all of the items in the room which included small knick-knacks that the tenant should have put in boxes. The landlord testified that an offer was made that the landlord would help the tenant deal with the larger items once all of the smaller possessions were cleared out. However, the tenant did not cooperate. The landlord testified that the landlord re-stated the offer in a letter dated January 28, 2009 and the tenant still has yet to clear the room in question. The landlord testified that the tenant was responsible for the delays in restoring the unit, which normally takes under a week to accomplish. The landlord testified that the tenant would not be entitled to a rent abatement for the loss of use of more than one week's rent. In regards to the tenant's rental arrears, the landlord testified that the tenant failed to pay rent for the month of January 2009 but paid rent for the month of February for use and occupation only. The landlord testified that a Ten-Day Notice to End Tenancy for Unpaid Rent was issued on January 7, 2009 and the tenant did not pay the arrears within five days. Therefore the landlord is requesting an Order of Possession.

#### Analysis – Notice to End Tenancy

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement.

I find that the tenant did not pay the rent when rent was due within 5 days of receiving the Notice to end Tenancy for Unpaid Rent and did not have a valid reason under the Act not to pay the rent. Accordingly, I must dismiss the portion of the tenant's application requesting an order to cancel the Ten-Day Notice.

During the hearing the landlord made a request for an order of possession. Under the provisions of section 55(1) of the Act, upon the request of a landlord, I must issue an

order of possession when I have upheld a notice to end tenancy. As the landlord accepted rent for use and occupancy for the month of February, the Order of Possession will be effective on March 1, 2009 at 1:00 p.m.

#### Analysis - Monetary Compensation

The tenant was requesting monetary compensation in the amount of \$2,500.00 which includes a 100% abatement totaling \$ 1,025.00 for all rent for the months of January and February 2009, \$416.00 loss of enjoyment during December and January and an additional \$379.00 for lost wages.

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7 and the evidence furnished by the applicant must satisfy each component of the test below:

#### Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. 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 tenant and the tenant has established that the rental unit was subject to a flood and then was undergoing repairs.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The tenant testified that the unit has not yet been restored to livable condition and that this was due to the landlord's noncompliance with the landlord's responsibilities under the Act. However, I find that the landlord's actions were in compliance with the Act in that the landlord did attempt to restore the unit to a livable condition without undue delay. I find that the landlord's ability to repair the unit was reliant upon certain actions being taken by the tenant. I find that the landlord's plan was impeded by the tenant's insistence that the tenant's possessions must remain in part of the room under repair. Even extending the benefit of the doubt to the tenant, that she was confused about what must be done, I find that all of the issues should still have been resolved and the repairs completed by mid January at the latest had the tenant been more flexible in working with the landlord instead of resisting the instructions she was given.

Based on the testimony and evidence, I find that the tenant is entitled to a rental abatement in the amount of \$270.00 for the loss of enjoyment and use of the unit for a period of time.

### **Conclusion**

Based on the testimony and evidence discussed above, I hereby issue an Order of Possession in favour of the landlord effective March 1, 2009 at 1:00 p.m.. The tenant must be served with the order of possession. 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.

I find that the tenant is entitled to a rental abatement in the amount of \$270.00 from the \$525.00 rent owed for the month of January 2009 reducing the rent for January 2009 to \$255.00. As this tenancy is ending, I order that the tenant's security deposit and interest of \$258.85 be applied to January rent owed, leaving a balance in favour of the tenant of \$3.85 which must be paid by the landlord forthwith.

February 2009

Date of Decision

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Dispute Resolution Officer