



Dispute Resolution Services

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

DECISION

Dispute Codes: OPR, MNR, MNSD, FF, CNC, MNDC & RR

Introduction

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

By application of January 19, 2009, the landlord seeks an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on January 7, 2009. The landlord also sought a Monetary Order for the unpaid rent and filing fee for this proceeding and authorization to retain the security deposit in set off.

I declined the landlord's claim for lost wages and travel to the rental unit as costs of doing business which cannot be claimed under the *Act*.

By application of January 12, 2009, the tenant seeks to have the Notice to End Tenancy set aside, monetary compensation for loss of quiet enjoyment and clean-up work and a rent reduction.

Issues to be Decided

This application requires a decision first, on whether the landlord is entitled to an Order of Possession and a Monetary on the unpaid rent and second, on whether the tenant is entitled to monetary compensation and/or a rent reduction.

Background and Evidence

This tenancy began November 30, 2008. Rent is \$700 per month and the landlord holds a security deposit of \$350 paid on November 30, 2008.

This dispute arose as a result of a leak in the hot water tank beginning December 24, 2008. The tenant called the landlord to advise him of the leak on December 25, 2008. The landlord, who was ill, asked the tenant to turn off the pressure tap to the tank and to see if she could engage a local plumber/gas fitter to replace the tank and to have him billed. In addition to being ill, the landlord stated that the weather was very bad that day making travel from his home in Coquitlam to the rental unit in Chilliwack treacherous.

The tenant gave evidence that she tried with the assistance of a neighbour to turn the pressure line off but was not successful. Subsequently, on Sunday, December 28, 2008, the landlord was able to attend at the rental unit with a qualified plumber and gas fitter and the hot water tank was replaced.

The landlord also stated that he vacuumed up all of the water except that which was covered by the tenant's furniture which he asked her to spot clean, a request to which he said the tenant agreed.

The landlord stated that, to his knowledge, the tenant was inconvenienced for four days and he voluntarily offered to deduct approximately seven days (\$150) of the January rent in compensation.

The tenant did not pay the January 2009 rent leading to the Notice to End Tenancy, and in the interim, she has not paid the rent for February 2009.

The parties are in dispute over the form in which the rent could be paid, the landlord stating that at the beginning of the tenancy he had asked, and the tenant had agreed, that the landlord would pick up the rent on the Saturday following the first day of each month. He stated that he made several attempts to collect the January rent.

The tenant states that she offered the rent by cheque, etc, but the landlord refused.

The tenant further claims that she spent many hours attempting to vacuum up the water and that as a result in the delay in stopping the leak, mold grew along and behind the baseboard which compromised her asthmatic condition. She said she felt compensation in the order of \$350 was more appropriate for her work and loss of quiet enjoyment.

Analysis

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 noted in the Notice and or for the following month. While there are provisions in the *Act* available to aggrieved tenants, none permit the withholding of rent.

Therefore, the landlord requested, and I find he is entitled to, an Order of Possession effective two days from service of it on the tenant.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent and filing fee for this proceeding, and authorization to retain the security deposit in set off.

As to the tenant's application, I find that she has been fairly compensated by the landlord's voluntary rent reduction of \$150, approximately seven days rent.

On balance, I find that the tenant owes to the landlord an amount calculated as follows:

January rent less \$150 reduction	\$550.00
February rent	700.00
Filing fee	50.00
Sub total	\$1,300.00
Less retained security deposit	- 350.00
Less interest (Nov. 30, 2008 to date)	- .46
TOTAL	\$ 949.54

Conclusion

Thus, the landlord's copy of this decision is accompanied by an Order of Possession effective two days from service of it on the tenant and a Monetary Order for \$949.54.

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.

February 18, 2009

Dispute Resolution Officer