



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, MNR, MND, MNDC, MNSD, OLC, RP, FF

Introduction

This hearing dealt with cross applications between the parties.

The Landlord filed an Application for Dispute Resolution in which the Landlord made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or for compensation for damage or loss; to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenants filed an Application for Dispute Resolution in which the Tenants made application for a monetary Order for money owed or for compensation for damage or loss; for an Order requiring the Landlord to comply with the *Residential Tenancy Act* (Act), for an Order requiring the Landlord to make repairs, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution. At the hearing the Tenants withdrew their application for an Order requiring the Landlord to make repairs and to comply with the Act, as the Tenants intend to vacate the rental unit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the Act.

The issues to be decided in relation to the Tenants' Application for Dispute Resolution are whether the Tenants are entitled to compensation for being without hot water and electricity for a period of time during the tenancy and to recover the filing fee from the

Landlord for the cost of the Application for Dispute Resolution, pursuant to sections 67 and 72 of the *Act*.

Background and Evidence

The Landlord and the Tenants agree that this tenancy began on January 01, 2008; that the Tenants are required to pay monthly rent of \$1,000.00; and that the Tenants paid a security deposit of \$500.00 on January 05, 2008.

The Landlord and the Tenants agree that the Tenants were not served with a Ten Day Notice to End Tenancy that complies with section 52 of the *Act*. At the hearing the parties agreed to mutually end the tenancy on April 01, 2009, and the Landlord requested an Order of Possession for that date.

The Landlord and the Tenants agree that the Tenants did not pay their rent for February of 2009 and March of 2009.

The Landlord stated that the Tenants still owe \$215.00 in rent from previous months. He stated that they owe \$115.00 from December of 2008 and \$100.00 from "many months before". The male Tenant agreed that they owed \$100.00 from sometime prior to December of 2008, but he denies owing \$115.00 from December of 2008.

The Landlord submitted several handwritten notes from the male Tenant that indicates that the rent is not always paid on time, however these notes do not make any specific reference to the amounts that were outstanding in 2008.

The Tenants are seeking compensation, in the amount of \$1,000.00, as they have been without hot water since February 24, 2009. The female Tenant stated that their hot water tank stopped working on February 24, 2009; that she advised the Landlord of the problem on that date; that the Landlord replaced the breaker for the hot water tank on February 25, 2009; that on February 25, 2009 she told him that the problem had not been rectified; at which time he told her it was her problem.

The Landlord stated that he was never told by the Tenants that the hot water tank was not working; that he was contacted by someone at the Residential Tenancy Branch sometime in February who told him that the hot water tank was not working, although he does not recall the date of that conversation; he had an electrician check to ensure that the breaker was working; and that the electrician advised him that it was working.

The female Tenant stated that they lost all power to their rental unit on February 27, 2009, which she believes was because the Landlord shut off the main power breaker. She stated that she asked the Landlord's friend to turn the power back on, however he did not comply. She stated that she subsequently contacted the police, who directed the Landlord to restore power on that same day.

The Landlord state that he did not know why there was a power failure in the rental unit; that the Tenant yelled at him and his friend when she told him to restore the power; that he called the police about the problem; and that he turned the breaker back on after the police told him to restore the power.

Analysis

On the basis of the mutual agreement to end tenancy that was reached during the hearing, I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on April 01, 2009.

As the parties agreed at the hearing that the Tenants owe \$2,000.00 in rent from February and March of 2009, I find that this amount of rent is due. As the parties agreed at the hearing that the Tenants owe \$100.00 in rent from an undetermined period in 2008, I find that this amount of rent is also due. Section 26(1) of the *Act* requires tenants to pay rent to their landlord, and I therefore find that the Tenants owe \$2,100.00 to the Landlord.

I find that the Landlord submitted insufficient evidence to establish that the Tenants still owe \$115.00 in rent from December of 2008. In reaching this conclusion I was strongly influenced by the fact that there was no documentary evidence submitted that show when payments were made and when payments were missed. On this basis, I dismiss the Landlord's application for a monetary Order for rent in the amount of \$115.00 from December of 2008. I do not find that the hand written notes from the Tenant to be helpful in determining whether \$115.00 was not paid in December of 2008, as those notes are not dated, and never refer to an amount of \$115.00.

I favour the testimony of the Tenants over the testimony of the Landlord in regards to the issue of hot water, and I find that the Tenants have been without hot water since February 24, 2009. In concluding that the Tenants gave more credible evidence in this regard, I considered the following:

- The evidence provided by the female Tenant was direct and forthright, while the evidence provided by the Landlord was circuitous and, at times, evasive
- I find it highly unlikely that the Tenants would contact the Residential Tenancy Branch to report an absence of hot water prior to contacting the Landlord, which is what the Landlord alleges
- I find it much more likely that the Tenants would contact the Residential Tenancy Branch to report an absence of hot water after the Landlord refused to remedy the problem, which is what the Tenants allege
- I find that the Landlord's acknowledged refusal to repair the hot water tank until the Residential Tenancy Branch intervened causes me to believe that the

Landlord was acting negligently or vindictively, and was not inclined to remedy the problem with the hot water

- I find that the Landlord's acknowledged refusal to restore the electricity to the rental unit on February 27, 2009 until the police instructed him to reinforces my belief that the Landlord was acting negligently or vindictively during the latter portion of this tenancy.

I find that the Tenants are entitled to compensation for the thirty-five days that they resided in the rental unit without access to hot water, which is a service that was agreed upon but not provided. I find they are entitled to compensation at a rate of \$20.00 per day, for a total of \$700.00. I find this to be reasonable compensation, as the lack of hot water prevented them from showering or using hot water for any purpose without heating it on the stove. Conversely, I find that they did have access to other amenities included with the rental unit and I do not find that they should be exempted from paying the full amount of the rent that was payable.

I find that the applications of both parties have merit and, therefore, I find that each party is responsible for the costs of filing their own Application for Dispute Resolution.

Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on April 01, 2009. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$2,100.00, which is comprised of \$2,100.00 in unpaid rent. I hereby authorize the Landlord to retain the security deposit of \$500.00, plus interest in the amount of \$7.42, in partial satisfaction of the monetary claim, leaving an amount owing of \$1,592.58.

I find that the Tenant has established a monetary claim, in the amount of \$700.00, as compensation for being without hot water.

After offsetting the two monetary awards, I find that the Tenants owe the Landlord \$892.58 and I grant the Landlord a monetary Order in that amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: March 30, 2009
