



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

Tenant's application (file 729594): CNC, OPT, LAT, RR, FF

Landlord's application (file 729596): OPC, OPB, MND, MNR, MNSD, MNDC, FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the "Act") to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. Both parties gave affirmed evidence and this matter proceeded on its merits.

Preliminary Matter

The Tenant's counsel testified that her client had not received copies of the Landlord's evidence packages and requested an adjournment in order for her client to have an opportunity to review the material.

The Landlord testified that she mailed copies of her evidence to the Tenant by registered mail. The Landlord provided copies of three receipts, which indicate the packages were addressed to the Tenant at the Tenant's residential address. Canada Post tracking searches indicate as follows:

- 1) Tracking number RW359593275CA: package mailed March 12, 2009; attempted delivery March 13, 2009, notice card left advising where to pick up package; package returned to sender, unclaimed, April 6, 2009.
- 2) Tracking number RW359591495CA: package mailed March 13, 2009; attempted delivery March 16, 2009, notice card left advising where to pick up package; package returned to sender, unclaimed, April 6, 2009.

- 3) Tracking number RW359591473CA: package mailed March 16, 2009; attempted delivery March 17, 2009, notice card left advising where to pick up package; package returned to sender, unclaimed, April 6, 2009.

Section 90 of the Act provides that documents served by registered mail are deemed to be received on the 5th day after mailing. The Landlord attempted to serve the Tenant with copies of her evidence, but the Tenant declined to pick them up after receiving notification of their availability at the Post Office. I dismissed the Tenant's application for an adjournment.

Issue(s) to be Decided

- (1) Should the Landlord's One Month Notice to End Tenancy be cancelled?
- (2) Is either party entitled to an Order of Possession?
- (3) Is the Tenant entitled to an Order allowing her to change the locks to the rental unit?
- (4) Is the Tenant entitled to an order reducing rent for repairs, services or facilities agreed upon but not provided?
- (5) Is the Landlord entitled to a monetary order?
- (6) Is either party entitled to recovery of her filing fee from the other party?

Background and Evidence

The parties agree on the following facts:

- Both parties were duly served with the other's application and notice of hearing package.
- The tenancy began on February 25, 2007. A security deposit in the amount of \$250.00 was paid: \$125.00 on May 2, 2007; and \$125.00 on May 9, 2007. There was a move-in inspection done. Monthly rent is \$500.00 per month, payable on the last day of the month, in advance.
- The Tenant withheld \$150.00 from rent due December 31, 2009 for January rent.

Landlord's testimony

The Landlord gave the following testimony:

- The Landlord claims damages arising from a fire which occurred in the Tenant's rental unit on December 27, 2007. The Landlord testified that the Tenant was drunk and did not wake up when a toaster was left on a live burner on her stove. The Landlord testified that the smoke alarms woke the other residents of the building, but that the Tenant was drunk and did not wake up. The Landlord stated that everything could have been lost due to the fire.
- The Landlord testified that prior to the fire, the Tenant changed the lock on the rental unit and refused to provide the Landlord with a key.
- The Landlord testified that the Tenant was repeatedly late in paying rent. For example, the Landlord testified that the Tenant paid only \$350.00 for January rent and was even late paying that reduced amount. The Landlord testified that the Tenant withheld \$150.00 from January rent. The Landlord testified that the Tenant did not pay February rent or March rent. The Landlord also applied for loss of rent for the month of April, 2009.
- The Landlord testified that the Tenant has up to dozens of cats and kittens in the rental unit. The Landlord testified that the tenancy agreement does not allow pets.
- The Landlord testified that the Tenant will not allow her to do an inspection of the rental unit since the fire. The Landlord testified that she has provided the Tenant with 24 hour notice of her intent to enter the rental unit, but the Tenant will not allow her to enter to inspect and repair the rental unit.

Tenant's testimony

The Tenant gave the following testimony:

- The Tenant testified that she left the stove turned on with her toaster on top of the element and as a result, there was soot and smoke damage to her apartment. The Tenant's apartment is on the ground floor of a three storey building, with other tenants occupying the upper floors. The Tenant testified that she was not drunk, but she was asleep when the smoke triggered the upstairs fire alarms. The Tenant stated that her smoke alarm did not go off.
- The Tenant stated that she changed the lock on her door because she had reason to believe that the Landlord was entering her rental unit without her knowledge or permission. The Tenant testified that there is another door accessing her rental unit, and that the Landlord has a key to that door. The Tenant testified that she withheld \$150.00 from January rent because there were some repairs that she wanted done, but they had not been addressed by the Landlord.
- The Tenant testified that she has 6 cats of her own and that she also temporarily takes in cats for the local SPCA.
- The Tenant testified that the Landlord has never provided her with a copy of the tenancy agreement.
- The Tenant testified that she closed her bank account in January, 2009. The Tenant testified that she paid February rent in cash on January 27, 2009, and that the Landlord did not provide her with a receipt. The Tenant testified that the Landlord refused to accept her rent money for the months of March and April.

Tenant's Witness's testimony

The Tenant's Witness gave the following affirmed testimony:

- The Tenant's Witness testified that she was present with the Tenant when the Tenant dropped off a rent payment at the Landlord's residence.
- The Tenant's Witness testified that she was shaken because of the way the Landlord and the Landlord's husband spoke to the Tenant. The Landlord's

husband was very angry and the Tenant's Witness felt threatened by his behaviour towards the Tenant and the Witness.

Analysis

The Landlord gave the following reasons for cause in her Notice to End Tenancy:

- 1) The Tenant is repeatedly late paying rent.
- 2) The Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the Landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the Landlord;
 - put the Landlord's property at significant risk.
- 3) The Tenant has caused extraordinary damage to the unit or property.
- 4) The Tenant has not done required repairs of damage to the unit.
- 5) Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The majority of the testimony and evidence of the parties is contradictory. I prefer the Landlord's evidence and testimony with respect to the late payment of rent. The Tenant applied to have the Landlord's Notice to End Tenancy set aside, but did not provide proof of timely payment of the monthly rent. An example of such proof might be a copy of bank statements or cancelled cheques from May, 2007 to January 2009, when the Tenant ceased to hold a bank account.

Section 26 of the Act states, in part: "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations, or the tenancy agreement". The Tenant agreed that she withheld \$150.00 from her January rent payment.

Section 31 of the Act states, in part: “a tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.” The Tenant changed the lock on her door without the Landlord’s permission and without a director’s order.

The Landlord testified that the tenancy agreement, a copy of which was entered into evidence, does not allow pets. The Tenant testified that she has 6 cats. However, the Landlord has known about the cats for a long time and failed to provide the Tenant with written notice to remove the cats from the rental unit. I dismiss this reason as cause to evict the Tenant.

I dismiss the Landlord’s claim for cause to evict with respect to paragraphs 2, 3 and 4 of the Notice to End Tenancy. The smoke damage occurred in December, 2007, and the Landlord did not issue the Notice to End Tenancy until February 27, 2009.

Based on the testimony of the parties, I find that the Landlord has cause to end the tenancy for repeated late payment of rent and non-payment of rent for the month of January, 2009.

The Landlord is entitled to an Order of Possession for Cause and I make that order. The Tenant agreed that she was personally served with the One Month Notice to End Tenancy on February 27, 2009. Therefore, the tenancy ended on March 31, 2009.

The tenancy has ended and therefore I dismiss the Tenant’s application to obtain an Order of Possession. I dismiss the Tenant’s application to be allowed to change the locks to the rental unit.

The Tenant provided no evidence with respect to repairs, services or utilities promised but not delivered. I dismiss the Tenant’s application to reduce rent.

I dismiss the Tenant’s application to recover the cost of the filing fee from the Landlord.

I dismiss, with leave to reapply, the Landlord’s application for a monetary order for damage to the unit or property, as it is premature and the Tenant is still in the rental

unit. The Landlord will not be in a position to provide receipts for proof of costs incurred, until work has been completed and any damages repaired.

The Landlord has largely been successful in her application and is entitled to recover the cost of the filing fee from the Tenant.

Pursuant to Section 72 of the Act, the Landlord may apply the security deposit towards satisfaction of her monetary claim.

Regarding the Landlord's application for a monetary order, the Landlord has established a claim in the amount of \$1,443.75, calculated as follows:

Arrears of January, 2009, rent:	\$150.00
Arrears of February, 2009, rent:	\$500.00
Arrears of March, 2009, rent:	\$500.00
Loss of April, 2009, rent:	\$500.00
Recovery of the filing fee:	\$50.00
Less the security deposit and accrued interest of \$6.25:	<u><\$256.25></u>
TOTAL:	\$1,443.75
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Conclusion

Pursuant to Section 55 of the Act, the Landlord is entitled to an Order of Possession and I hereby issue the order effective two days from service of the order. This order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court

Pursuant to Sections 67 and 72 of the Act, I grant the Landlord a monetary order for \$1,443.75 against the Tenant. This order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

The Landlord has leave to reapply for a monetary order for damages to the unit.

April 14, 2009
