

DECISION

Dispute Codes MNDC OLC RP FF MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for an Order to end the tenancy early and a monetary claim for money owed or compensation for damage or loss under the *Act*, to request the landlord to comply with the *Act* and make repairs to the rental unit, and for the tenant to recover the filing fee for this application.

This hearing also dealt with an application filed by the landlord requesting a monetary claim for unpaid rent and to recover the filing fee from the tenant for the landlord's application. Both applications were heard at the same time pursuant to Section 73 of the *Residential Tenancy Act*.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 14, 2009. The mail receipt number was provided in the documentary evidence. The landlord was deemed to be served the hearing documents on March 19, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 8, 2009. The mail receipt number was provided in the verbal testimony. The tenant was deemed to be served the hearing documents on April 13, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the landlord and tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

The landlord's documentary evidence will not be considered during this hearing as per Section 11.5 of the Residential Tenancy Branch Rules of Procedure, as the evidence was received at the Residential Tenancy Branch late and the tenant testified that she had not received the landlord's evidence.

All of the testimony and the tenant's documentary evidence were carefully considered.

Issues(s) to be Decided

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

- Whether the tenant is entitled to end the tenancy early pursuant to Section 50 of the *Residential Tenancy Act*
- Whether the tenant is entitled to a Monetary Order under section 67 of the *Act* for money owed or compensation for damage or loss.
- Whether the tenant is entitled to recover the cost of the filing fee
- Whether the landlord is entitled to a Monetary Order under section 67 of the *Act* for unpaid rent
- Whether the landlord is entitled to recover the cost of the filing fee

Background and Evidence

Tenant's request to end the tenancy early

The tenant stated that she had known that the tenant in the unit next door to her had been having issues with mice in her rental unit for a few months and back in January 2009 the tenant decided to put steel wool and tinfoil in all of the potential mice access holes in her apartment.

The tenant testified that when she returned to her rental unit after reading break, on approximately Sunday March 1, 2009, she found mouse droppings and urine in her apartment. She stated that she called her neighbour who came over and assisted the tenant in searching for additional mice feces and provided information on the health and safety issues.

The tenant testified that she called the landlord on the evening of March 9, 2009 and requested to meet with him. She said she wanted to speak with him in person however the landlord was out of town at that moment so the tenant told the landlord that she had found mouse droppings. The tenant testified that the landlord advised her that he would meet with her the next day and would bring mice traps to place in her rental unit.

The tenant entered pictures into evidence which were taken between March 7, 2009 and March 9, 2009. She stated that she told the landlord on March 9, 2009 that she wanted to end the tenancy early, now that she had found mice droppings in her rental unit, and provided a copy of a letter issued March 9, 2009 to the landlord that requested an end of tenancy as of "April 31st".

The tenant stated that when the landlord refused to sign the mutual agreement to end the tenancy early she followed up her previous requests with an e-mail and written letter which was issued to the landlord on March 11, 2009. Copies of the e-mail and letter were entered into evidence.

The tenant testified that she moved out of the rental unit on March 27, 28 and 29th, 2009 but later recanted her statement and said she stayed with a friend on March 30th and 31st and didn't "officially" move out until March 31, 2009.

When the tenant was asked, if the presence of mice feces was such a health and safety risk, why she waited 8 days before contacting the landlord about the presence of mice feces in her apartment, the tenant testified that she needed time to quietly work through the situation before contacting the landlord. Then later on during the hearing the tenant requested that the date of March 1, 2009 not be held on record as the date that she found the feces as she couldn't be certain as to the date she first found the feces.

The tenant testified that she continued to stay in the apartment through the month of March 2009 as she just wanted to be alone to deal with the situation and it wasn't until March 30th when she felt she needed to stay with a friend.

The tenant testified that she moved out March 31, 2009 as that is when she wanted the tenancy to end and that she had made a typing error in her letter to request the end of the tenancy and that it should have read that she requested the tenancy to end March 31st and not April 31st.

Tenant's request for a Monetary Order

The tenant is requesting a monetary claim of \$600.00 which is comprised of a rent abatement, fees for last minute move, cost of certified mail, and tinfoil and steel wool supplies used to seal access holes in the apartment.

Landlord's testimony

The landlord has agreed to end the tenancy early on April 30, 2009 and testified that the tenant didn't give him a chance to respond to the presence of mice feces in her apartment.

The landlord stated that he received a call from the tenant on March 9, 2009 stating that she wanted him to agree to end her tenancy early because she had found mice feces in her apartment. The landlord stated the he told the tenant he was out of town and would attend to her apartment the next morning.

The landlord testified that he brought mouse traps to the tenant's apartment the next day, March 10, 2009 and that he began to work on re-renting her apartment.

The landlord stated that the tenant moved out March 31, 2009 and that he has not been able to re-rent the unit for April 2009. The landlord is seeking monetary compensation for April 2009 rent, has applied to offset this with the tenant's security deposit and is requesting to recover the filing fee.

The landlord testified that by mutual agreement with the tenant, a move out inspection was not completed and that he was satisfied that the tenant had left the apartment in good condition and he is not seeking anything from the tenant in relation to the move out condition of the rental unit.

The landlord testified that he was instructed by a professional pest control company to place a cracker with peanut butter on it, in the tenant's suite after she moved out, to see if a mouse would take it. He stated that the mice did not take the cracker so the landlord believes that the remediation has been successful in the tenant's apartment.

The tenant responded to the landlord's statement about the cracker by stating that information was in the evidence submitted late by the landlord and that it shouldn't be considered. When the tenant was reminded that she testified that she hadn't received the landlord's evidence she replied that the landlord had her parent's address in Calgary, as the tenant's forwarding address, and that the tenant's mother had received the evidence and read it to the tenant over the phone, but that the tenant hadn't physically received the evidence.

Analysis

The landlord has agreed to end the tenancy early effective April 30, 2009, and I find that the tenancy has ended on April 30, 2009.

I find that in order to justify payment of damages under sections 55 of the *Act*, the Applicant would be required to prove 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. It is important to note that in a 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 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 the tenant's claim, the burden of proof is on 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 tenant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The issue of credibility needs to be considered with respect to the tenant's testimony. I find that the tenant completely contradicted herself when she stated that the presence of mice didn't become evident in her apartment until the beginning of March and that the mere presence of mice or mice feces in her apartment has caused her such anxiety that she needs to end a fixed term tenancy two months later and then changes her mind stating that she wanted it to end in one month. On the other hand the tenant testifies that she didn't leave the apartment prior to March 30th, because she needed quiet time to ponder the situation, think things through while in the presence of mice feces, and that mice posed a serious health and safety risk, yet she waited 8 days before informing the landlord of the presence of mice feces in her apartment.

In respect of the tenant's claim, I find that she has failed to prove that her losses stemmed directly from the landlord's contravention of the *Act*. In this instance, I find that it was in fact the tenant who contravened the *Act* when she failed to inform the landlord of a health and safety concern for 8 days, did not give the landlord an appropriate

amount of time to deal with the problem, and then ended the tenancy without mutual consent. I hereby dismiss the tenant's claim without leave to reapply.

With respect to the landlord's claim, the burden of proof is on the landlord 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 tenant. I find that there is evidence in support of the landlord's claim that the tenant failed to pay the April 2009 rent of \$820.00 and that she is in breach of the fixed term tenancy.

Given the verbal testimony and written documentation provided by the tenant, I find that there was a mutual agreement not to conduct a move out inspection, that the landlord is satisfied with the condition the tenant left the apartment in, and that the landlord has followed Section 38 of the *Residential Tenancy Act* in applying to keep all or part of the tenant's security deposit of \$410.00 plus \$2.17 interest in partial satisfaction of his monetary claim.

I find that the landlord has succeeded in large and that he should recover the filing fee from the tenant.

Conclusion

I HEREBY FIND that the tenancy will end on April 30, 2009.

I HEREBY DISMISS the tenant's monetary claim without leave to reapply.

I HEREBY FIND that the landlord is entitled to a Monetary Order, including recovery from the tenant of the filing fee for this proceeding as follows:

Unpaid Rent for April 2009	\$820.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$870.00
LESS: Security Deposit of \$410.00 plus Interest of \$2.17	-412.17
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$457.83

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$457.83. The order must be served on the respondent and is enforceable through the Provincial Court and enforced as an order of that Court.

I HEREBY DISMISS the tenant's monetary claim without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 17, 2009.

Dispute Resolution Officer