



Dispute Resolution Services

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

DECISION

Dispute Codes: OPR, MNR, MND, MNSD, CNC, CNR and FF

Introduction

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

By application of March 2, 2009, the landlord seeks an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent dated March 2, 2009 and a 30-day Notice for cause dated March 2, 2009. The landlord also sought a Monetary Order for the unpaid rent and recovery of their filing fee and authorization to retain the security deposit in set off.

By application of February 16, 2009, the tenant sought a Monetary Order for \$1,209.23 for deficiencies in the rental unit.

By application of March 3, 2009, the tenant sought to have the Notices to End Tenancy set aside.

Issues to be Decided

The landlord's application requires a decision on whether the landlord is entitled to an Order of Possession and Monetary Order for the unpaid rent and filing fee for this proceeding, and authorization to retain the security deposit in set off.

The tenant's applications require a decision on whether the tenant is entitled to have the notices set aside and whether the tenant is entitled to monetary compensation for losses and claimed deficiencies in the rental unit.

Background and Evidence and Analysis

This tenancy began July 1, 2008 with the current tenant and a co-tenant who subsequently left the tenancy. Rent was \$675 per month and the landlord holds a security deposit of \$337.50 paid on or about July 15, 2008.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served as the tenant had not paid rent for August of 2008 and the rent for March 2009 was short by \$175.

The tenant concurred that the March rent was short by \$175 but stated that \$350 had been paid for August. Given the lack of documentary evidence on the question from either party, and given that the burden of proof is on the party making the claim, I accept the tenant's accounting that she owes \$325 for the August rent.

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 but has made application to dispute the notice.

As the tenant concurred with still unpaid rent shortfalls for both August 2008 and March 2009, I find that the landlord is entitled to an Order of Possession on the March 2, 2009 notice to end tenancy for unpaid rent.

Therefore, I find that the landlord is entitled to an Order of Possession effective two days from service of it upon the tenant. Having so determined, I find the notices for cause (repeated late payment) are rendered moot and it is not necessary to consider them further.

As to the landlord's claim for a Monetary Order, I find that the landlord is entitled to recover the rent shortfalls of \$325 and \$175, plus the 50 filing fee for this proceeding and authorization to retain the security deposit in set off against the balance.

The tenant makes claim for monetary compensation for deficiencies in the rental unit and services and I find as follows:

Broken fridge and food loss - \$192.68. The parties agree that the tenant informed the landlord just before Christmas that the fridge was defective and not cooling properly. The landlord stated that he tried unsuccessfully to have a service person attended soon after, but only got the suggestion to try adjusting the temperature downward. The strategy failed and, somewhat delayed by inclement weather, the landlord was able to get a replacement on January 13, 2009. As I cannot know for certain how much of the contents remained of the items claimed by the tenant and what perishables were lost, I find that the tenant should receive credit for \$100 for loss of the use of the fridge and replacement of spoiled contents.

Loss of heat and hot water. The tenant makes claim that the rental unit was uncomfortably cold by night and the hot water scarce as the landlord limited these services in the name of economy. The landlord flatly denied the possibility and stated heating was gas fired hot water rather than electric baseboard as claimed by the tenant. Given that the tenant provided the landlord with no written complaint on these services, I decline to award compensation.

Gutters separated from building. The tenant claims damages as a result of the gutters having come loose from the roof edge and a consequent drip at her unit entry. The landlord said this was the result of the unusually heavy snow in December and it took some time to arrange for repairs. I find that the inconvenience to the tenant is not sufficient to warrant monetary compensation.

Odour from landlord's dog. The tenant stated that her quiet enjoyment of the rental unit was much diminished by the fact that the landlord's dog pen was adjacent to her rental unit, waste was frequently flushed to her part of the parking area, and pet hairs collected on her window. The landlord stated that he kept the pen clean and that the tenant's claims were exaggerated. In the absence of written notice with a request for a remedy to the landlord, I am unable to assess this claim.

Loss of cable service. The tenant claimed a temporary loss of cable service, resulting in her contracting for service in her own name while \$25 of the rent was to it. The landlord said he had restored the service after a short time. Therefore, I will allow the tenant a \$25 credit on this claim.

Loss of stove use. The tenant stated that the stove had not worked properly from the beginning of the tenancy. The landlord stated that her co-tenant had mentioned a problem at the beginning of the tenancy, but soon after told the landlord that he had fixed it himself.

The landlord stated he was not aware of any problem with the stove until around Thanksgiving when the tenant reported it to him and it was resolved shortly after. I find that the tenant has not proven this claim and it is dismissed.

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

August 2008 rent shortfall	\$ 325.00
March 2009 rent shortfall	175.00
Filing fee	50.00
Sub total	\$550.00
Less retained security deposit	- 337.50
Less interest (July 15, 2008 to date)	- 2.35
Less tenant credit for loss of use and contents of fridge	- 100.00
Less tenant credit for temporary loss of cable	- 25.00
TOTAL	\$ 85.15

Conclusion

The landlords' copy of this decision is accompanied by an Order of Possession effective two days from service of it on the tenant and Monetary Order for \$85.15 for service on the tenant..

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.

April 1, 2009
