

## **DECISION**

Dispute Codes      OPR MNR MNDC MND FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession for unpaid rent and to request a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, for damage to the unit, and to recover the cost of the filing fee from the tenant for this application.

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 May 6, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on May 11, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

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

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession Under section 55 of the *Residential Tenancy Act* and a Monetary Order under section 67 of the *Act*?

### Background and Evidence

The month to month tenancy began on October 28, 2002 with rent payable on the first of each month in the amount of \$400.00. There was no security deposit paid and no move in inspection report completed at the onset of the tenancy.

The landlord testified that the tenant is in arrears for 10 months of rent. The landlord stated that there were some months back in 2007 and 2008 where the tenant put stop payments on his rent cheques but that the landlord did not have an accurate accounting of which months were outstanding prior to 2009. The landlord testified that the tenant has not paid any rent at all for 2009 so for the six months of January 2009 up to June 2009 the rent has not been paid. The landlord advised that she had applied to dispute resolution for an Order of Possession but that her request was dismissed on April 3, 2009 as she had reinstated the tenancy after her notice to end tenancy was issued.

The landlord provided evidence that a 10 Day Notice to End Tenancy was sent to the tenant on April 9, 2009 via regular mail.

The tenant testified that he received the 10 Day Notice to End Tenancy in the mail and that while he knows he has not paid rent for some time, the tenant did not have an exact accounting of when he last paid rent. The tenant stated that he believes he stopped paying rent in December some time as that is when his water system broke. The tenant testified that he has been living without water since December 2008.

The landlord testified that she was aware that there was no water at the rental unit, that she was not made aware of the problem until February 2009, and that she does not have the money to fix the problem. The landlord stated that while she has known that the tenant has been living without water, for almost 5 months, she did not want to put him out on the street and that she had hoped he would have moved into a care facility by now.

The tenant testified that he is a senior and has suffered some health issues. The tenant advised that he is currently working with Vancouver Island Health Authority to be placed in a care facility.

The witness for the tenant testified that she has been working with the tenant since approximately May 14, 2009 that the tenant is now healthy enough so they are working

towards having him placed in a care facility as soon as possible. The witness confirmed that the tenant is currently living in a rental unit that does not have water.

A discussion took place whereby the landlord and tenant agreed to an Order of Possession date effective July 31, 2009 at 1:00 p.m.

The landlord is claiming damages to an antique dining table, wood stove, refrigerator, stove, hide-a-bed, lazy-boy chair, oil stove, and clean-up of garbage that was piled on the property for a total amount of \$2,700.00.

The tenant testified that the landlord had rented the guest house to a tenant and his girlfriend in approximately June 2007 and it was these two tenants who trashed the guest house, wrecked the furniture that the landlord is speaking about, and it was those tenants who piled most of the garbage out in the yard. The tenant stated that he remembered something in relation to the fridge being from his rental unit, but that given his poor health he wasn't able to remember what actually occurred with the fridge.

The landlord confirmed that she had rented the guest house to the other tenant and his girlfriend but that it was this tenant who was supposed to be responsible for the entire property. The landlord testified that there was no move-in or move-out inspection conducted with the other tenant and his girlfriend.

The landlord is requesting an Order of Possession date July 31, 2009 and a monetary claim for 10 months unpaid rent of \$4,000.00 and damages in the amount of \$2,700.00.

### Analysis

I find that in order to justify payment of damages or losses under sections 67 of the *Act*, the Applicant landlord 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, in this case the landlord, bears the burden of proof and the evidence furnished by the Applicant landlord 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 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 regards to the landlord's right to claim damages from the tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Monetary Claim- Unpaid Rent – Based on the testimony and evidence before me I find that the tenant stopped paying rent as of January 2009 and that he did so as he was living without the essential service of water.

The landlord has been aware of the existing problem with the water system for over 5 months now and she has refused to repair the problems, claiming she cannot afford the repairs, causing the tenant to live with out the essential service of water for an unreasonable amount of time. I find the landlord has contravened Section 32 of the *Residential Tenancy Act* which states that a landlord must provide and maintain

residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In a tenancy arrangement the landlord is in a position of authority and in this situation, given the tenant's age and health, I find that the landlord allowed the tenant to live in substandard conditions, without the essential service of water, for an unreasonable amount of time, which has negatively affected the tenant's health.

While this is not the tenant's application I still find that the evidence supports that the tenant has endured a substantial devaluation of the tenancy over the past several months from the loss of the essential service of water, and that the tenant stopped paying the rent as it was the only way he was capable of getting the landlord to take notice. I find that the landlord has taken no action to correct the problem with the water system and based on her testimony she has no intention of doing so in the near future. Based on the aforementioned I hereby dismiss the landlord's claim for 10 months of unpaid rent up to June 2009, without leave to reapply.

Damages \$2,700.00 – The landlord did not conduct a move-in inspection report for the current tenant nor did she conduct a move-in and move-out inspection report for the other tenant and his girlfriend. The landlord has submitted her claim of loss based on a typewritten statement with no documentary evidence to show the condition of the items claimed prior to the tenancy beginning and the current condition of the items claimed. The landlord supplied a copy of a letter received by Vancouver Island Health Authority instructing the landlord to remove the garbage from the rental unit however there is no proof to substantiate the landlord's claim that it was the existing tenant who created the pile of garbage and not the other tenant and his girlfriend causing the landlord's loss. Based on the aforementioned I find that the landlord has failed to prove the test for damages, as listed above, and I hereby dismiss the landlord's claim without leave to reapply.

Order of Possession – The parties have agreed to an Order of Possession in favour of the landlord, effective July 31, 2009 at 1:00 p.m.

Recover Filing Fee – As the landlord has not been primarily successful with her claim, I hereby dismiss her request to recover the \$50.00 filing fee from the tenant, without leave to reapply.

Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **July 31, 2009 at 1:00 p.m.** This order must be served on the respondent tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY dismiss the landlord's monetary claims, 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: June 08, 2009.

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Dispute Resolution Officer