

# Dispute Resolution Services

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

## **DECISION**

### **Dispute Codes:**

CNL, MNDC, OPR, MNR, RP, RPP, LRE, RR, FF

### **Introduction**

This hearing was convened in response to an application filed by the tenant and an application filed by the landlord. Both parties were represented in the hearing and each was given an opportunity to participate in the hearing and each provided submissions and testimony to this process.

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*.

The tenant is seeking:

- To cancel a Notice for Unpaid Rent issued on April 23, 2009
- Recover costs from the landlord for emergency repairs.
- Money owed or compensation for damage or loss under the Act, regulation or tenancy agreement

The tenant's total monetary claim is for \$1600.

- For the landlord to comply with the Act
- For the landlord to make emergency repairs for health or safety reasons
- For the landlord to make repairs
- Allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.
- To recover the filing fee from the landlord for this application in amount of \$50.

The landlord seeks:

- An Order of Possession due to unpaid rent
- A Monetary Order for the unpaid rent for the months of April, May and an amount for June 2009.

- To keep the security deposit in partial satisfaction of unpaid rent
- To recover the filing fee from the tenant for this application in amount of \$50.

### **Issue(s) to be Decided**

- Should the Notice to End Tenancy for Unpaid Rent be cancelled?
- Is the tenant entitled to the monetary amounts claimed?
- Should the landlord be made to comply with the Act, make emergency repairs, or ordered to make repairs to the rental unit?
- Has the tenant established, on a balance of probabilities, that they have suffered a loss due to the landlord's neglect or failure to comply with the Act? And, if so established, did the tenant take reasonable steps to mitigate the loss? The burden of proving loss and damage rests on the claimant, and, there is an obligation upon the claimant to act reasonably to mitigate or minimize the loss.
- Should the tenant be allowed to reduce rent for a facility agreed upon but not provided?
- Is the landlord's notice to end tenancy valid?
- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

This tenancy began on October 01, 2008. Rent is \$800 payable on the first of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$400.

The relevant undisputed evidence or testimony before me is as follow:

- A move in inspection was not performed by the landlord and tenant.
- since moving into the rental unit, the tenant identified to the landlord a number of deficiencies with the unit, and some of these deficiencies were settled between the parties as compensation to the tenant by way of a deduction from rent for the month of February 2009 in the amount of \$506.32, and from rent for March 2009 the amount of \$400 for a total of \$906.32.

- The outstanding portion of the tenant's claim is in respect to a plumbing leak in the kitchen, a broken door, and a partially defective stove. The landlord acknowledges these deficiencies. The landlord originally authorized the tenant to have the leak repaired and for her to deduct it from rent, but the tenant did not determine to do this for lack of money, but did not inform the landlord. The landlord also acknowledges knowing of the problem with the stove and offered to swap it with another, albeit more compact model, however, at this point the tenant had not paid rent and the parties did not determine to follow through with the remedy for the stove.
- The tenant failed to pay rent in the month of April 2009 and on April 23, 2009 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the month of May 2009. The parties agree that rent for June 2009 has not been paid as of the time of the hearing.
- The broken entry door has never been repaired.
- The tenant does not desire to remain in this rental unit and plans to vacate by June 15, 2009.

The landlord stated his willingness to compensate the tenant for the leak as originally determined to have the leak repaired, in the amount of \$150.

The landlord stated he is willing to compensate the tenant for the deficiency in the stove of the, for a facility agreed upon but not provided, at \$20 per month for eight months of her tenancy, in the total amount of \$160.

The landlord is agreeable to allowing the tenant to remain until the middle of June, and seeks an Order of Possession effective June 15, 2009.

### **Analysis**

Based on the testimony before me **I find** that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent and applied for dispute resolution to dispute the notice, but to date has not paid the arrears in rent and is therefore conclusively presumed to have accepted the tenancy ended on the effective date of the notice.

Based on the above facts I must find that the landlord is entitled to an Order of Possession. As agreed by the parties, the landlord's Order of Possession will be effective June 15, 2009 when the tenancy will end. The tenant is responsible for rent up to that date.

Therefore, **I find** that the landlord has established a claim for unpaid rent for April, May and to June 15, 2009. The landlord is also entitled to recovery of the **\$50** filing fee.

**I order** that the landlord retain the security deposit and interest of **\$451.51** in partial satisfaction of the monetary claim.

The tenant's claim is poorly supported by lack of specific and quantifiable evidence on which an Arbitrator can base compensation for portions of her claim. However, I am satisfied the tenant to date has already received compensation in the amount of **\$906.32**.

**I find** the landlord has agreed to further compensate the tenant for the kitchen leak in the amount of **\$150**.

**I find** the landlord has agreed to further compensation to the tenant for the deficient stove in the rental unit, in the total amount of **\$160**.

I prefer the tenant's evidence, both oral and via photographic submission that the tenant's entry door is broken, and I find the tenant has had to live with this unacceptable fact for the duration of the tenancy and is entitled to be compensated for a facility agreed upon but not provided. **I find** the tenancy in this regard has been devalued and the tenant is entitled to a reduction of rent in the amount of \$25 per month for eight (8) months for a quantum of **\$200**.

As the tenant's claim has partial merit, the tenant is entitled to partial recovery of the filing fee in the amount of **\$25**.

As I have found that the tenancy is ending, I decline to make an Order that the landlord must make repairs to the rental unit, or an Order that the tenant is entitled to additional reduction of future rent.

The respective entitlements of the landlord and the tenant are reflected in the following calculation:

Rent for April to landlord	\$800
Rent for May to Landlord	\$800
Rent to June 15, 2009 to Landlord	\$400
Filing fee to landlord	\$50
Compensation for kitchen leak to tenant	-\$150
Compensation for deficient stove to tenant	-\$160
Compensation for broken entry door to tenant	-\$200
Filing fee to tenant	-\$25
Security deposit to be retained by landlord	-\$451.51
<b>Owing to landlord</b>	<b>\$1063.49</b>

### **Conclusion**

**I am granting** an Order of Possession to the landlord effective **June 15, 2009**. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I am granting** the landlord an order under Section 67 of the Act for the balance of **\$1063.49**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated June 01, 2009