

Dispute Resolution Services

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

DECISION

Dispute Codes:

OPR, MNR, MNDC, MNSD, CNR, 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 affirmed 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 seeks:

- To Cancel a Notice for Unpaid Rent.
- Money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an allegedly damaged computer due to an electrical issue.
- To recover the filing fee from the landlord for this application in amount of \$50

The landlord seeks:

- An Order of Possession for Unpaid Rent
- A Monetary Order for Unpaid Rent and utilities from April to June 2009
- keep all or part of the security deposit as partial satisfaction of the monetary claims
- Money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- To recover the filing fee from the landlord for this application in amount of \$50

Issue(s) to be Decided

Is the notice to end tenancy issued by the landlord valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Should the notice to end tenancy be cancelled?

Is the tenant entitled to the monetary amounts claimed?

Has the tenant or landlord established, on a balance of probabilities, that they have suffered a loss due to the others neglect or failure to comply with the Act? And, if so established, did the tenant or landlord 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.

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenant still resides in the rental unit as of this date, but states have secured an alternate rental unit and are waiting to move into this new unit soon.

The tenancy began on December 29, 2008. Rent in the amount of \$1300 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$650. The tenant supplied a rent cheque for the month of April 2009 to the landlord; however this cheque was cancelled via a Stop Payment. The tenant did fail to pay rent in the month of May 2009 and on May 02, 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 June, 2009. Also, the tenant has not paid utilities submitted by the landlord total \$311.38.

The landlord seeks an Order of Possession as soon as possible, and is agreeable to an effective date of June 15, 2009.

The landlord is claiming loss of revenue for the month of July 2009, saying it is may be difficult to secure tenants for the rental unit for July. The total of the landlord's monetary claim on application is

\$3900 in unpaid rent – April, May, June 2009,

\$311.38 in unpaid utilities,

\$1300 loss of revenue for July 2009 For a quantum of **\$5511.38**

The tenant testified they have not paid rent for May and June 2009.

The tenant further testified that on March 17, 2009 their computer, and telephone allegedly suffered an electrical malfunction purportedly due to faulty wiring in the rental unit. The tenant provided a repair work estimate for the computer dated March 23, 2009 stating the repairs to the computer amount to \$416.22 plus taxes. The tenant determined the repairs were not worth having done. The tenant is claiming compensation for a new computer and telephone for an undisclosed amount. The tenant also supplied evidence in the manner of a document of a recent electrical inspection, also in the possession of the landlord, identifying there to be deficiencies in the electrical service to the rental unit to this day, with stipulated timelines for its remediation by the landlord. The landlord acknowledged that the rental property experienced some problems with its electrical service, but that the problem of March 17, 2009 was quickly attended to by an electrical contractor and that any required repairs were made immediately after the March 17 incident. There is dispute as to whether the electrical contractor actually assessed the site of the tenant's damaged computer when he attended on March 18, 2009. The tenant claims the computer had been removed the previous day and was in for repair estimates. However, the landlord's electrician speaks only of the condition of the cord that was plugged in, and that a fault with the cord caused the damage to the receptacle and consequently to the computer.

The landlord submitted statements from current and previous tenants as to their experience with the property's electrical system. They state they have not experienced issues in this regard. However, It is safe to say that most people's experience with electrical problems is that electrical service issues are typically not evident until a problem occurs – they are unforeseen and do not cause concern until a problem suddenly manifests itself.

Analysis

I have reviewed all submissions and reflected on all the testimony and claims of the parties, and given full regard to all the parties' circumstances.

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, 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 other party 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.

Simply stated, the claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

As to the landlord's claims:

Based on the testimony of the tenant and the landlord 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 utilities.

Based on the above facts I find that the landlord is entitled to an Order of Possession.

I find that the landlord has established a claim for \$4211.38 in unpaid rent and utilities.

I decline to award the landlord loss of revenue for July 2009. The landlord has leave to reapply should the month of July present a valid claim for loss of revenue.

The landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$4261.38**.

As to the tenant's claims:

As the landlord's Notice to End has been upheld, the tenant's claim to cancel the Notice to End, effectively, is dismissed.

I accept that an electrical issue occurred in the rental property, and I do not prefer the evidence of one party over the other in respect to this issue. On the preponderance of the evidence I do not find the tenant's claim for damage meets the test for damage and loss claims. Therefore, I dismiss this portion of the tenant's application. As the tenant's application lacks merit, I decline to grant the tenant recovery of the filing fee.

Conclusion

I grant 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 order that the landlord retain the deposit and accrued interest of \$650.08 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$3611.30**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated June 09 , 2009