



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to Cancel a Notice to End tenancy, for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement and a Monetary Order to recover the filing fee.

The tenant served the landlord personally on May 10, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to compensation for damages and if so how much?
- Is the landlord entitled to end the tenancy?
- Is the tenant entitled to recover filing fees from the landlord for the cost of the application?

Background and Evidence

This tenancy started on October 01, 2004. The rent is \$741.00 per month payable on the 1st of each month. The tenant paid a security deposit of \$320.00 and a pet damage deposit of \$320.00 on September 15, 2004. The tenant has not paid rent for May 2009 and the landlord issued a 10 Day Notice to End Tenancy for unpaid rent on May 04, 2009.

The tenant disputes this Notice and testifies that she asked the landlord to negotiate the payment of the rent owed as the tenant had started a new job and wanted to pay back the rent owed on her first pay date. The tenant asked the landlord to withdraw the cheque she had given them as rent payment until she had the funds to pay it. The tenant testifies that the landlord failed to repair the roof and as a result every time it rained the roof leaked and this has subsequently caused water damage to her couch. The tenant withheld her rent for May and June, 2009 due to the repairs required. The tenant has not provided any evidence to support her claim for compensation for damage to her couch.

Analysis

TEST FOR DAMAGE AND LOSS CLAIMS

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenants claim for compensation does not meet any of the components of the above test. The tenant has not submitted any evidence to support her claim for



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compensation for damage or loss under the *Act*. The tenants claim for compensation is dismissed with leave to reapply.

The landlords have requested an Order of Possession. The tenant agrees that she does owe rent to the landlord. Therefore, I uphold the landlords Notice to End Tenancy for unpaid rent and grant the landlord an Order of Possession.

As the tenant has not been successful in her application I **dismiss** her claim to recover the filing fee from the landlord.

Conclusion

An Order of Possession has been issued to the landlord. A copy of the Orders must be served on the tenant and the tenant must vacate the rental unit **two days** after service. The Order of Possession may be enforced in the Supreme Court of British Columbia.

The tenants' monetary claim is dismissed with 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 15, 2009.

Dispute Resolution Officer