



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, CNR, MNDC, OLC, ERP, RP, FF

Introduction

This hearing dealt with two applications: 1) from the tenants for cancellation of notice to end tenancy for unpaid rent or utilities, a monetary order for damage or loss under the Act, orders against the landlord to comply with the Act & make repairs to the unit (including emergency repairs), and recovery of the filing fee; 2) from the landlord for an order of possession, a monetary order for unpaid rent / compensation for costs which include but are not limited to cleaning and repairs to damage, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the parties have established claims to any of the entitlements, as above

Background and Evidence

Pursuant to a written residential tenancy agreement the term of tenancy was from June 1, 2008 to May 31, 2010. Rent in the amount of \$3,995.00 was payable on the first day of the month, and a security deposit of \$1,997.50 was collected on April 24, 2008.

A hearing was previously held in a dispute between these same parties on December 15, 2008. As a result, by way of a decision dated of January 7, 2009, the dispute resolution officer found, in part, as follows:

I find the Landlord has breached section 32 of the Act by not providing a rental unit which complies with the health, safety and housing standards required by

law. Generally speaking, I find the rental unit likely suffered from lack of maintenance prior to being rented by the Tenants. The property was vacant for a number of months and this likely led to the maintenance issues now arising.

The accumulated problems all lead me to determine that the tenancy should end. Therefore, pursuant to section 44 of the Act, I order that the term tenancy agreement may end, through no fault of the Tenants.

Subsequently, by written agreement between the parties dated February 11, 2009, the fixed term of tenancy was shortened by 11 months and was to end on June 30, 2009. Further, the monthly rent was reduced by \$995.00 to \$3,000.00 per month effective from February 1, 2009.

Arising from rent that remained unpaid on June 1, 2009, the landlord issued a 10 day notice to end tenancy dated June 6, 2009. In response, the tenants filed an application for dispute resolution on June 9, 2009. Thereafter, the tenants did not pay the outstanding rent and vacated the unit on June 30, 2009.

In response to various deficiencies and other miscellaneous concerns about the condition of the rental property, the tenants seek compensation in the amount of \$12,000.00, calculated on the basis of \$1,000.00 per month for each month during a 12 month period. The tenants argue that their decision to withhold payment of rent for June 2009 was made in connection with the above deficiencies and concerns.

In the landlord's application, compensation is sought for unpaid rent for June 2009 in the amount of \$3,000.00, in addition to the \$100.00 filing fee and compensation for the following costs:

\$311.00 - refill the propane tank

\$527.00 - carpet cleaning

\$670.00	- garden work
\$800.00	- inside cleaning
\$950.00	- painting

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated June 6, 2009. While the tenants did not pay the outstanding rent, they applied to dispute the notice within 5 days of receiving it.

As earlier stated, the term of the tenancy has expired and the tenants have vacated the unit. Accordingly, I dismiss the landlord's application for an order of possession, and I dismiss the tenants' application for cancellation of the notice to end tenancy for unpaid rent or utilities. Further, I dismiss the tenants' application for orders against the landlord to comply with the Act and make repairs to the unit (including emergency repairs).

I turn now to the tenants' application for compensation associated with the alleged deficiencies and other concerns related to the condition of the rental property. Once again, I refer to the decision issued on January 7, 2009, wherein the dispute resolution officer stated, "I do not need to address the claim for compensation as the Tenants agreed they would not seek compensation if an order to end the tenancy was granted." As earlier noted, such an end to tenancy was ordered and the parties thereafter re-negotiated the terms of the tenancy, which included a reduction in monthly rent.

In view of the tenants' undertaking, as documented above, and after reviewing the extensive documentation submitted by the parties, on a balance of probabilities I am not persuaded that the tenants have established entitlement to compensation for damage or loss under the Act. Further, in their application, the tenants have not applied for authorization to reduce the rent for repairs, services or facilities agreed upon but not provided.

Section 26 of the Act speaks to **Rules about payment and non-payment of rent**. In particular, section 26(1) provides as follows:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Pursuant to all of the above, I find that the landlord has established entitlement to a monetary order for unpaid rent in the amount of \$3,000.00.

As for the landlord's claim for compensation over and above unpaid rent, I refer to the provisions set out in Rule 3.5 of the Residential Tenancy Branch Rules of Procedure. Specifically, Rule 3.5(a) & (b) reads as follows:

3.5 Evidence not filed with the Application for Dispute Resolution

(a) Copies of any documents, photographs, video or audio tape evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least five (5) days before the dispute resolution proceeding as those days are defined in the "Definitions" part of the Rules of Procedure.

(b) If the time between the filing of the application and the date of the dispute resolution proceeding does not allow the five (5) day requirement of a) to be met, then the evidence must be received by the Residential Tenancy Branch and served on the respondent at least two (2) days before the dispute resolution proceeding.

Further to the recovery of unpaid rent, the five (5) specific aspects of the landlord's claim for compensation have been set out above and total \$3,258.00. However, documentary evidence to support these costs is incomplete. I find that receipts which

demonstrate that costs have actually been incurred by the landlord appear to be limited to carpet cleaning in the amount of \$527.00. Other costs are variously either estimates, in which case the expenses have not yet been incurred, or in the alternative, receipts have simply not been submitted into evidence.

Notwithstanding the above findings, section 35 of the Act addresses **Condition inspection: end of tenancy**. In particular, section 35(2) & (2) states:

35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Further to the above statutory provision, section 17 of the Residential Tenancy Regulation speaks to **Two opportunities for inspection** and provides as follows:

17(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations

of the other party that are known and that affect that party's availability to attend the inspection.

For the information of the parties, the full text of the relevant legislation, fact sheets, Residential Tenancy Branch Rules of Procedure, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website:

www.rto.gov.bc.ca/

One such form available via this website is the "Notice of Final Opportunity to Schedule a Condition Inspection."

In sum, as for a move-out condition inspection, there is no evidence that the proper process was undertaken. Accordingly, I find that the landlord has not established entitlement to a monetary order for assorted costs in excess of unpaid rent and the filing fee.

However, I find that the landlord has established entitlement to a claim in the total amount of \$3,100.00, which is comprised of \$3,000.00 in unpaid rent, and recovery of the \$100.00 filing fee. I order that the landlord retain the security deposit of \$1,997.50 plus interest of \$20.63, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$1,081.87 (\$3,100.00 – \$2,018.13).

As the tenants have not succeeded in this application, their application for recovery of the filing fee is also dismissed.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$1,081.87**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: July 23, 2009

Dispute Resolution Officer