



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

MNR, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent and utilities and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. The Tenant has made Application for Dispute Resolution requesting more time to cancel a notice to end tenancy, to cancel a notice to end tenancy, for compensation that the Landlord comply with the Act, make repairs and emergency repairs, provide services or facilities required by the Act, return the Tenant's personal property, that the Tenant be granted an Order of possession and to recover filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence and to make submissions during the hearing.

Preliminary Matter(s)

At the start of the hearing the Tenant confirmed that she moved out of the rental unit on July 31, 2009. Therefore, the Tenant stated that a number of the claims made in her Application were no longer necessary. It was agreed that the Tenant's Application for compensation, return of personal property and filing fee costs would proceed. The balance of the Tenant's claim is dismissed without leave to reapply.

As the Tenant has moved out the Landlord no longer requires an Order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and utilities?

Is the Tenant entitled to compensation for utility bill payment, loss of personal property and replacement of belongings due to bed bugs?

Is either party entitled to filing fee costs?

Background and Evidence

The parties agreed during the hearing that there was not a signed tenancy agreement. The tenancy commenced May 1, 2008, rent was \$1,100.00 per month. The Landlord testified that the Tenant was to pay utility costs; the Tenant stated that she paid one \$800.00 bill in February 2009 as the landlord threatened her with eviction.

The landlord confirmed she provided the Tenant with a letter, submitted as evidence by the Tenant, at the start of the tenancy which indicated that rent was to be \$1,100.00 per month, that one month free rent was provided for cleaning that was required and that the Tenant was to be given a trailer. The Landlord's letter states that the trailer is valued between \$1,500.00 and \$2,000.00.

During the hearing the Tenant acknowledged that she did not pay rent for June or July, 2009.

The landlord provided a copy of a City of Chilliwack Utility Bill issued on June 8, 2009 in the sum of \$475.31 which includes costs for water, sewer, garbage collection and a small interest charge. The Tenant acknowledged receipt of this bill on July 9, 2009 when served a notice to end tenancy.

The Tenant is claiming compensation in the sum of \$800.00 for payment of a utility bill that was not included as an obligation in the verbal tenancy agreement, compensation in the sum of \$2000.00 for the value of a trailer the Landlord had given the Tenant and \$700.00 for the loss of bedroom furniture that was infested with bed bugs. The Tenant stated that this furniture could not be moved and that she has not been able to afford to purchase mattresses to replace the infested belongings.

The Landlord acknowledged receipt of the Tenant's May 8, 2009 letter sent via registered mail in which the Tenant reminded the Landlord that the Tenants had told the Landlord that the unit next door was infested with bed bugs. The letter requested a number of repairs and assistance with the bed bug problem and informed that Landlord that her response that the Tenants must pay for bed bug treatment was a breach of section 32 of the Act. The Tenant stated that the rental unit adjoining hers had become infested and that the bed bugs had migrated into her bedroom. The Tenant testified that in April 2009 she used 10 cans of bug spray and that she was given no assistance from the Landlord.

The Landlord stated that she entered the adjoining rental unit once it was vacated and cleaned. The Landlord confirmed that she was aware of the Tenant's bed bug problem but that she felt the Tenant was paying below market monthly rent and that the Tenant was responsible for rectifying the problem. The Landlord stated she could not afford to pay to have the rental unit sprayed and that after receipt of the May 8 letter she did not attend at the rental unit to investigate the concerns expressed by the Tenant.

The Tenant stated that the Landlord had given her a utility trailer in exchange for work the Tenant had completed for the Landlord. The Landlord acknowledged that she did give the Tenant the trailer but that the ownership was never formally transferred to the Tenant. The Tenant confirmed that she was not provided with ownership documents.

During the hearing the Landlord stated that the trailer sat at the rental for 9 months and that she then had the trailer taken to the dump as it was full of garbage and rats. The Tenant testified that the trailer was not taken to the dump and that the Landlord's family has possession of the trailer. The Landlord then confirmed that this is the case and that since the trailer was not legally transferred there is no obligation that the trailer be returned to the Tenant. The Tenant is requesting return of the trailer or compensation for the value of the trailer and bases this claim on the letter in which the Landlord stated the trailer was given to the Tenant.

Analysis

The Tenant has confirmed that rent is owed to the Landlord for June and July 2009 rent in the sum of \$2,200.00.

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if the obligations under the agreement are not clearly communicated. The absence of any signed tenancy agreement upon which the parties can agree fails to provide any evidence of the requirement for utility payments. In the absence of a clearly communicated obligation I dismiss without leave to reapply the Landlord's claim for utility costs.

The Tenant has claimed return of payment made for a utility bill in the sum of \$800.00 which the Tenant claims she was not bound to pay. The Tenant has provided no evidence that this payment was made and I find, in the absence of any documentation showing payment, that this claim is dismissed without leave to reapply.

I find that the Tenant is entitled to compensation in the sum of \$700.00 for bedroom furniture loss. Section 32(1) of the Act requires a Landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and makes it suitable for occupation by a tenant. The Act also states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The Tenant made attempts to rectify the bed bug problem that both parties acknowledge originated from the adjoining suite. The landlord failed, as required under section 7 of the Act, to mitigate the problem by taking action as soon as she was made aware of the bed bugs and I find that this failure resulted in a lack of necessary maintenance by the Landlord and a resulting loss to the Tenant.

I find that the dispute related to the trailer is a matter that can not be determined by the Residential Tenancy Act. Residential Tenancy Regulations refer to a Landlord's responsibility for abandoned property only. The Tenant is alleging that the Landlord has essentially stolen the trailer at some point during the tenancy. I have made no determination on the ownership of the trailer and find that Tenant's application requesting return or compensation for the trailer is dismissed without leave to reapply.

As each parties Application has partial merit I find that neither party is entitled to filing fee costs.

Conclusion

I find that the Landlord has established a total monetary claim of \$2,200.00 comprised of unpaid rent for June and July, 2009. I find that the Tenant has established a total monetary claim of \$700.00 for the loss of property infested with bed bugs.

Section 72(2) of the Act allows a dispute resolution officer to set off amounts owed between parties; therefore, I find that the Landlord is entitled to compensation in the sum of \$1,500.00 and I grant the Landlord an order under section 67 for that amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I have dismissed without leave to reapply the balance of the claims made by the Landlord and Tenant.

As each party was partially successful I find that neither is entitled to filing fee costs.

Dated August 21, 2009.

Dispute Resolution Officer