

Decision

Dispute Codes: OPR, MNR, MNSD, CNR, MNDC, ERP, RR, FF

Introduction

This hearing dealt with two applications: 1) from the tenant for cancellation of the notice to end tenancy, a monetary order as compensation for damage or loss under the Act / regulation / tenancy agreement, an order requiring the landlord to make emergency repairs, permission to reduce the rent for repairs, services or facilities agreed upon but not provided, and recovery of the filing fee; 2) from the landlord for an order of possession, a monetary order as compensation for unpaid rent, retention of the security deposit, and recovery of the filing fee. Both parties were represented in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party is entitled to any or all of the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from June 1 to November 30, 2008. Thereafter, tenancy has continued on a month-to-month basis. Rent in the amount of \$1,175.00 is payable in advance on the first day of each month, and a security deposit of \$587.50 was collected on June 1, 2008. While there were 2 tenants at the outset of tenancy, it is understood that the other tenant vacated the unit sometime around the middle of September 2009.

Arising from rent that was unpaid for October and November 2009, the landlord issued a 10 day notice to end tenancy for unpaid rent dated November 2, 2009. The notice was served by posting on the tenant's door on that same date. A copy of the notice was submitted into evidence. Subsequently, the tenant has made no payment toward rent and continues to occupy the unit.

The tenant's agent does not dispute that rent is overdue for October and November 2009, and claims that the tenant's failure to remain current with the rent is due in part to the absence of a roommate.

The tenant seeks compensation for various problems arising in the unit. He claims there was a plumbing failure which led to some flooding and need for cleanup in the bathroom on September 13, 2009. It is understood that the landlord made the necessary repairs later that same day.

The tenant claims that the bathroom mirror broke spontaneously on September 19, 2009. It is understood that the mirror was replaced during the afternoon on October 1, 2009. The tenant seeks compensation for cleaning up the broken mirror in the bathroom and for the inconvenience of having no bathroom mirror for several days.

The tenant claims there was a further plumbing leak in the bathroom on October 9, 2009. While the bathroom was able to be used, the tenant maintains that a bucket used to collect leaking water required emptying every 1 to 2 hours. The parties appear to agree that the plumbing was fixed on October 14, 2009, with repairs to the wall completed on October 16, 2009. The tenant seeks compensation for this inconvenience.

Finally, the tenant claims he was required to miss 1 full day off work on October 13, 2009 in order to report the plumbing problem to the landlord. For this he also seeks compensation.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated November 2, 2009. While the tenant did not pay the outstanding rent within 5 days of receiving the notice, he applied to dispute the notice. As there is no dispute between the parties that rent has not been paid for either October or November 2009, I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim of \$2,400.00. This is comprised of \$2,350.00 in unpaid rent for 2 months (2 x \$1,175.00), and \$50.00 combined for 2 fees assessed for late payment of rent (2 x \$25.00). I order that the landlord retain the security deposit of \$587.50 plus interest of \$5.15 (total: \$592.65) and apply it against the above claim. This results in a claim by the landlord in the amount of \$1,807.35 (\$2,400.00 - \$592.65).

As for the claim advanced by the tenant, I find there were restrictions of service or facility through no apparent fault of either party. Accordingly, I find that the tenant has established entitlement as follows:

\$15.00 arising from the plumbing problem on September 13;

\$130.00 arising from cleanup of the broken mirror and absence of a bathroom mirror from September 19 to October 1 (13 days x \$10.00 per day);

\$90.00 arising from the plumbing problem from October 9 to 14 (6 days x \$15.00 per day).

Total: \$235.00

I am not persuaded there was a requirement that the tenant miss 1 full day's work in relation to reporting the plumbing problem to the landlord on October 13. Further, the tenant submitted no authoritative documentation to support either his absence from work or his calculation of loss. Accordingly, I dismiss the tenant's claim for lost wages.

Offsetting the respective claims, I find that the landlord has established a net entitlement of \$1,572.35 (\$1,807.35 - \$235.00).

As both parties have met with some success in their applications, I hereby dismiss their respective applications for recovery of the filing fee.

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenant. This order must be served on the tenant. 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.

Following from all of the above and pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$1,572.35**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 27, 2009

Dispute Resolution Officer