Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, CNR, OPR, OPC, OLC, MND, MNDC, MNR, MNSD, RP, RR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied for an order of possession, for compensation for damages and unpaid rent and to keep all or part of the security deposit. The tenant has applied to cancel two notices to end tenancy, compensation for damages under the act, to have the landlord comply with the act and make repairs and to reduce rent for repairs or services not provided.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of Possession for unpaid rent and for cause; to a monetary order for unpaid rent; compensation for damages; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenant is entitled to cancel the two notices to end tenancy; for a monetary order for damage or loss under the Act; make repairs and allow a rent reduction for repairs or services not provided, pursuant to sections 46, 47, 55, 67, and 72 of the *Act*.

Preliminary Issues

At the first hearing on November 24, 2009 the tenant indicated that she had moved out of the dispute address on November 14, 2009 and that she had provided a notice to the person she had considered the landlord's agent on November 12, 2009 that she would be doing so. The tenant agreed to amend her application to withdraw her request to cancel the notices to end tenancy.

This hearing was originally scheduled for and began on November 24, 2009 but due to technical difficulties had to be reconvened on December 7, 2009 for completion.

On November 24, 2009 a new Notice of Hearing was sent from the Residential Tenancy Branch to both the landlord and the tenant. The tenant had failed to provide the Residential Tenancy Branch her new address and the Notice was mailed to the

dispute address. The tenant testified that she continued to check the mail at that address but did not receive the Notice.

When I adjourned the original hearing I advised both the landlord and the tenant that I would be requesting the hearing be held as quickly as possible, within a week or two of the original hearing and that notices would be sent to them as soon as possible. The tenant did not provide any testimony as to why, when she did not receive a notice, she did not check with the Residential Tenancy Branch to find out when the hearing would be reconvened. I find the tenant should have known and actively contacted the Residential Tenancy Branch to discover the hearing date.

The tenant testified that she was not served with the Notice of Hearing for the landlord's application within the three days required by Section 59 of the *Act*. The landlord's application was received by the Residential Tenancy Branch on November 12, 2009. Notes on the file indicate service of the Notice was to be completed by November 15, 2009.

The landlord provided an Affidavit of Service indicating the service of these documents was performed on November 17, 2009 at 2:17 p.m. While this service falls outside of the required 3 days pursuant to Section 59. However issues identified in the landlord's application related to and were similar to the issues in the tenant's application, I find that the tenant was not prejudiced by the late service.

During the reconvened hearing the landlord testified that he had not received the tenant's evidence. The tenant testified that she had sent via registered mail. The tenant could not provide a registered mail tracking number or provide any Proof of Service. The landlord agreed to continue the hearing, in the absence of the evidence.

At the end of the reconvened hearing, the tenant felt that there had not been sufficient time given to provide for testimony from all of her witnesses. With the agreement of all parties I requested written submissions from the remaining witnesses and for final written summations of their positions.

Both parties were given two full business days to submit their additional evidence and submissions. Both parties provided written witness testimony and final summations by the end of business two days following the date of the hearing.

Throughout the written evidence and the hearing there was much debate over whether the landlord's realtor had been acting as the landlord's agent in relation to the tenancy. While this matter is not of great importance to this decision I feel it is necessary to confirm the realtor has acted as an agent of the landlord. Regardless of this finding, what is more germane is the tenant believed she was dealing with the landlord's agent.

The Residential Tenancy Policy Guidelines state simply that an agent is where one person represents another person. The act of providing notices to the tenant on behalf of the landlord such as a Notice to End Tenancy or a Notice of Landlord's Entry would render the person an agent of the landlord.

Background and Evidence

The tenant has submitted into evidence the following documents:

- A summary of the dispute details, including details of her monetary claim and responses to the landlord's application;
- Page 2 of 6 of a fixed term tenancy agreement;
- Notices from landlord's agent regarding a landlord's inspection and showings of the property;
- Emails to the tenant from third parties, including friends, neighbours and a co-worker;
- Copy of a 1 Month Notice to End Tenancy for Cause dated September 24, 2009 with an effective vacancy date of October 30, 2009 citing the tenant has put the landlord's property at significant risk and the tenant has failed to pay a pet damage deposit within 30 days; and
- Written submission as requested by myself outlining final statements and two witness statements.

The landlord has submitted the following documentary evidence:

- Copies of various receipts and invoices;
- A copy of 3 separate 10 Day Notices to End Tenancy for Unpaid Utilities, dated July 8, 2009, August 11, 2009 and November 8, 2009;
- A copy of a 1 Month Notice to End Tenancy for Cause dated November 8, 2009 with an effective vacancy date of December 08, 2009 citing the tenant is repeatedly late paying rent; has significantly interfered with or unreasonably disturbed another occupant or the landlord; the tenant has engaged in an illegal activity that has damaged the landlord's property and jeopardized a lawful right or interest of another occupant or the landlord;
- A summary of events of the dispute;
- A copy of a tenancy agreement signed by both parties in February 2009 for a one year fixed term tenancy starting on March 1, 2009 for monthly rent of $1200.00 due on the 1st of the month and a security deposit of $600.00 was paid on March 1, 2009;
- A handwritten notice dated July 8, 2009 requesting the tenant to pay off the utilities that are in arrears in the amount of $219.86;
- Several emails between the landlords and tenant – many of which are not responded to by the tenant after July 15, 2009;

- A handwritten notice dated August 19, 2009 requesting a pet damage deposit of $600.00 to be paid within 30 days;
- Several emails between the landlord and the plumbing company; and
- Written submission as requested by myself outlining final statements and two witness statements

The landlords provided evidence and testimony that the tenant's rent cheque for June, 2009 did not clear. The landlords communicated with the tenant via email to arrange a replacement payment. The June 2009 replacement payment was received on June 24, 2009. The landlord also indicated the same scenario occurred in July 2009 with rent being paid on July 15, 2009.

The landlords provided a notice to the tenant on July 8, 2009 to pay outstanding utilities as required under the tenancy agreement. On August 19, 2009, as a result of the landlords' discovery that the tenant had two cats; the landlords requested the tenant pay a pet damage deposit in the amount of $600.00.

The evidence before me shows the landlords had their agent provide notice to the tenant that they intended to complete an inspection on August 1, 2009.

The landlords' agent testified that when he served the notice he knocked on the door and there was no response. He started to place the notice on the door and the tenant's son opened the door and stated his mother was at the store. The agent gave the notice to the son.

The landlord's appeared at the dispute address on August 1, 2009 for the inspection. The tenant was not at the rental unit when the landlords arrived, but her weekend guests were. The landlord attempted to gain entry to complete the inspection.

The tenant's guest would not allow the landlord in as she did not know them and was not prepared to let someone in to her friend's rental unit without authourization. The tenant's guest provided testimony of an altercation between the landlords and herself was of such concern that she felt it was not safe for herself and her family to continue to spend the weekend with the tenant.

The tenant arrived 15 minutes later and told the landlords that they could not inspect the rental unit on this date but they should return the next day for their inspection. The landlords asked the tenant for a certified cheque for rent in light of the recent problems they had had receiving their rent monies from the tenant. The tenant refused.

The landlords completed their inspection the following day and asked the tenant if there was anything that needed repairs. The tenant responded that no repairs were required. Ten days later the tenant sent an email to the landlord's agent regarding a problem with the kitchen faucet and the bathroom fan.

The landlords tried to arrange for contractors attend the rental unit to complete repairs. The tenant indicated that the days offered by the contractors were not acceptable to her and that no one ever came to effect repairs.

By written submission, one of the landlord's plumbing contractors indicates that she called the tenant on October 17, 2009 to discuss arrangements to complete the repairs. The contractor indicated that the tenant said she could not do it during the day as she worked in another community.

The contractor states she offered to come within the next half hour (of the phone call). The tenant did not agree to this offer.

By written submission a friend of the tenant indicated that he was there the day the faucet malfunctioned. The friend indicated that he had experience with plumbing supplies and looked at the faucet and determined that a cartridge required replacement. The tenant contends that the faucet was never repaired and this constitutes part of her monetary claim.

The landlords provided substantial documentation showing they had tried to communicate with the tenant on several occasions, including an email they sent to her advising her to not contact their agent but to deal directly with them. The landlord submits that the tenant never responded. The tenant confirmed that the landlords had tried to reach her by leaving messages at work and on her phone, but that she would only communicate in writing to the landlord. The tenant also testified that she blocked emails from the landlord and only dealt with the agent.

The tenant contends that she was afraid of the landlord and preferred dealing with the agent. She further stated in the first hearing that she didn't pay rent in October 2009 because she hadn't had any water since August 2009 in her kitchen. She also stated at that time that she didn't pay rent in November 2009 because she had already secured a new rental unit.

The tenant also claimed a loss of quiet enjoyment resulting from the following actions she attributes to the landlords:

- Email to neighbour regarding utilities;
- Serving Notice to minor child;
- False report to Ministry for Children & Families*;*
- Landlord's actions & behaviour August 1, 2009;
- Repairman's actions August 11, 2009; and
- Investigation by Children and Families*.*

Analysis

Section 26 of the *Act* states a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord is in breach of the *Act* or tenancy agreement. Therefore I find that the tenant owes rent until the end of the tenancy for the months of October, November and December.

This is a fixed term tenancy that ends on February 28, 2010; as such the tenant may be liable for rent for the duration of the term. The landlords have a responsibility to mitigate any losses before consideration may be given for compensation for lost rent for the months of January and February, 2010.

On the issue of the outstanding utilities, the landlord has provided sufficient evidence that the tenant owes both for the period of March 1, 2009 to March 19, 2009 in the amount of $126.96 and for the period ending November 18, 2009 in the amount of $237.35. I find the landlord is entitled to the sum of $364.31 from the tenant.

As to the landlords' claims for compensation related to the service of documents and other charges related to these hearings, I find these to be costs of doing business and dismiss this part of the landlord's application without leave to reapply.

The landlord has also amended, in his written submission after the hearing, to include compensation for cleaning, damages and repairs for the rental unit. As this was not part of the original application, I dismiss this part of the landlord's application with leave to reapply under a separate Application for Dispute Resolution.

As to the tenant's claims for loss of quiet enjoyment the tenant the onus is on the tenant to prove the loss. The tenant's indication of the cause of the loss of quiet enjoyment and my findings are as follows:

- Email to neighbour regarding utilities – the tenant has failed to show how this has impacted her quiet enjoyment;
- Serving Notice to minor child - the tenant has failed to show how this has impacted her quiet enjoyment ;
- False report to Ministry for Children & Families – citizens of BC are required by law to report when they believe children are in jeopardy as such an interpretation of the *Residential Tenancy Act* cannot limit obligations set out in the *Child, Family and Community Service Act;*
- Landlord's actions & behaviour August 1, 2009 – As to the testimony provided by the parties and witnesses, I find that based on the preceding events of the tenancy that the landlords may have been coming from a place of extreme frustration with the tenant but based on the behaviour of the tenant during the tenancy, I find, it is most likely that the recollection of the events by the tenant are an exaggeration of the true event;

- Repairman's actions August 11, 2009 – as the recounting of this event by the tenant and the repairman are contrary and because there is no corroborating evidence or witness I find the tenant has failed to prove a loss of quiet enjoyment; and
- Investigation by Children and Families – citizens of BC are required by law to report when they believe children are in jeopardy as such an interpretation of the *Residential Tenancy Act* cannot limit obligations set out in the *Child, Family and Community Service Act.*

As a result of these findings I dismiss this part of the tenant's application without leave to reapply.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of repair that complies with the health, safety and housing standards required by law. Based on the testimony provided by all parties, I find the landlords and service providers had made reasonable attempts to repair the faucet and were met with resistance for access from the tenant.

In light of this and because the tenant indicated that she knew what the specific cause of the malfunction, I find that the tenant could have accommodated the repairs, either by completing them herself or by allowing the service providers access. I further find that the tenant cannot now claim a loss based on an incident where she contributed to the outcome. As such, I dismiss this part of the tenant's application without leave to reapply.

Regarding the claim of the tenant to hotel charges for guests, as I have already found that the tenant has failed to show that the events of August 1, 2009 lead to a loss of quiet enjoyment and as the tenant has not suffered a financial loss of any events related to hotel accommodation, I dismiss this part of the tenant's application without leave to reapply.

And finally, in relation to the tenant's claim for compensation equal to one month rent as the landlord should be responsible for moving costs, the tenant has failed to substantiate this claim at all. Although the Notices to End tenancy issued by the landlord are no longer relevant because the tenant moved out of the dispute address, based on the written evidence and testimony, I find it was the tenant who breached the tenancy agreement and therefore dismiss this part of the tenant's application without leave to reapply.

As the tenant was unsuccessful in her application, I dismiss her application to recover the filing fee for this hearing.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$4,014.31** comprised of $3,600.00 rent owed; $364.31for utilities owed and the $50.00 fee paid by the Landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of $600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **$3,414.31**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: December 16, 2009.

Dispute Resolution Officer