



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, OLC, RP, FF

Introduction

This hearing was scheduled in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

The Tenants filed an Application for Dispute Resolution, in which the Tenants made application for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to comply with the *Act Residential Tenancy Act (Act)*; and for an Order requiring the Landlord to make repairs to the rental unit.

The parties in attendance at the hearing were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord stated that he did not serve copies of the Application for Dispute Resolution and Notice of Hearing on the Tenant with the initials "SW". The Landlord elected to remove the name of the Tenant with the initials "SW" from his Application for Dispute Resolution and the Application was amended accordingly.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for rent from November and December of 2009; to keep 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, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided in relation to the Tenants' Application for Dispute Resolution are whether the Tenant is entitled to compensation for loss of quiet enjoyment; to an Order requiring the Landlord to comply with the Act or their tenancy agreement; and to an Order requiring the Landlord to make repairs to the rental unit, pursuant to sections 32, 62(3), and 67 of the *Act*.

Background and Evidence

The Landlord and the Tenant agree that the Tenant and her co-tenant are currently required to pay monthly rent of \$725.00 on the first day of each month. The Landlord believes the Tenant and her co-tenant paid a security deposit of \$350.00 on February 01, 2008 and the Tenant believes they paid this deposit on January 21, 2008. Neither party submitted documentation to establish the date that the security deposit was paid.

The Landlord and the Tenant agree that rent has not been paid for November or December of 2009.

The Landlord and the Tenant agree that the Landlord personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of November 12, 2009, on November 02, 2009. The Landlord and the Tenant agree that the Notice declared that the Tenant owed \$725.00 in rent that was due on November 02, 2009.

The Landlord stated that he submitted a copy of the Notice to End Tenancy to the Residential Tenancy Branch, however I did not have a copy in front of me at the time of the hearing. The Tenant had a copy of the Notice with her at the time of the hearing. The Landlord was advised that I would be unable to issue an Order of Possession without viewing the Notice to End Tenancy that is the subject of this hearing. He was provided with the opportunity to fax a copy of that Notice to End Tenancy prior to the end of December 17, 2009 and he was clearly advised that I would not be issuing an Order of Possession if the Notice to End Tenancy was not received by the end of the day.

The Landlord faxed a copy of the tenancy agreement prior to the end of the business day on December 17, 2009. A copy of the Notice to End Tenancy was not received at that time nor had one been received by the start of the business day on December 18, 2009.

The Tenant or the co-tenant did not dispute the Notice to End Tenancy nor did they pay the outstanding rent.

The Landlord and the Tenant agree that the Landlord removed the front door of the rental unit on November 12, 2009; that the police were called as a result of the incident on November 12, 2009 but they declined to assist as they deemed the incident a civil

matter; that the Tenant erected a make shift door using a blanket and the bedroom door which she leaned against the front door of her rental unit; that the makeshift door was not secure; that the Landlord removed the makeshift door on November 16, 2009; that the Landlord pushed her on November 16, 2009; that the police were called as a result of the incident on November 16, 2009; and that the caretaker replaced her front door on November 16, 2009.

The Landlord stated that he removed the front door on November 12, 2009 because he was angry that the Tenant did not pay her rent and because she laughed at him when he asked for the rent. He stated that he believed he had the authority to remove the front door to the rental unit because he owns the building. He denied pushing the Tenant at any time.

The Tenant stated that she could not leave her home between November 12, 2009 and November 16, 2009 because she could not secure her door and she was worried about the security of her personal belongings. She stated that she is a very small women and that she felt very unsafe when she was forced to stay in an insecure suite between November 12, 2009 and November 16, 2009; that she was so afraid of the Landlord during the incident on November 16, 2009 that she blew her "rape whistle"; and that she has felt unsafe since the incident on November 12, 2009 as she does not know if the Landlord will remove her door again. The Tenant is seeking compensation, in the amount of \$1,500.00, for the fear and inconvenience that she experienced as a result of the Landlord's actions.

The Tenant stated that the front door has now been repaired and she is no longer seeking an Order that requires the Landlord to make repairs or to comply with the *Act*.

Analysis

I find that the Tenant and her co-tenant entered into a tenancy agreement with the Landlord that requires them to pay monthly rent of \$725.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Based on the undisputed evidence presented at the hearing, I find that rent has not been paid for November and December of 2009. As rent must be paid pursuant to section 26(1) of the *Act*, I find that the Tenants owe \$1,450.00 in outstanding rent.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. The undisputed evidence shows that the Tenant was personally served with a Notice to End Tenancy on November 02, 2009, which declared that the Tenant must vacate the rental unit by November 12, 2009, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for

Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended.

As I have not received a copy of the Notice to End Tenancy and have not had the opportunity to determine that it is a valid Notice, I dismiss the Landlord's application for an Order of Possession. As the Landlord was advised at the hearing, I will not grant an Order of Possession on the basis of a Notice to End tenancy that I have not viewed. I grant the Landlord leave to reapply on this specific issue, as I have not made a determination on the validity of the Notice to End Tenancy.

Every tenancy agreement contains an implied covenant of quiet enjoyment. If no written provision exists in a tenancy agreement, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes. I find that there was a substantial interference with the ordinary and lawful enjoyment of the rental unit when the Landlord removed the front door of the rental unit. I find that this was a flagrant disregard for the *Act*; that it served to persecute and intimidate the Tenant; and that it significantly impacted that Tenant's sense of security. I find that the Tenant is entitled to compensation in the amount of \$725.00, as I find that the Tenant's right to quiet enjoyment to her rental unit has been seriously breached to the extent that the value of her tenancy has been reduced by 50% for the months of November and December.

I find that the Application for Dispute Resolution that was filed by each party has merit, and I therefore find that they each are responsible for the costs of filing their own Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,450.00 in compensation for unpaid rent from November and December of 2009.

I find that the Tenant has established a monetary claim, in the amount of \$725.00 in compensation for the loss of the quiet enjoyment of her rental unit.

I hereby authorize the Landlord to retain the security deposit paid in relation to this tenancy, in the amount of \$350.00, plus interest in the amount of \$4.85. I determined the amount of interest due by averaging the amount that would have been due had the security deposit been paid on January 21, 2008 and the amount that would have been due had the deposit been paid on February 01, 2008, as I have insufficient evidence to determine precisely when the deposit was paid.

After offsetting the two monetary awards and deducting the security deposit from the Landlord's monetary award, I find that the Tenant must pay the Landlord \$370.15, and I grant the Landlord a monetary award in that amount. In the event that the Tenant does

not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

A copy of the Residential Tenancy Act Guide for Landlords and Tenants has been provided to both parties to ensure that they understand the rights and obligations of a tenancy.

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 18, 2009.

Dispute Resolution Officer