

Decision

Dispute Codes: OPR, MT, CNR, MNR, MNDC, MNSD, OLC, PSF, LRE, RR, FF

Introduction

This hearing dealt with two applications: 1) from the landlord(s) for an order of possession, a monetary order as compensation for unpaid rent, compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee; 2) from the tenant for more time to dispute a notice to end tenancy, cancellation of the notice to end tenancy, a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, orders instructing the landlord to comply with the Act, regulation or tenancy agreement, provide services or facilities required by law, suspend or set conditions on the landlord's right to enter the rental unit, allow a reduction in rent for repairs, services or facilities agreed upon but not provided, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

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

Background and Evidence

A previous hearing was held in a dispute between these parties in relation to the same tenancy on December 2, 2009, with a decision issued on December 3, 2009, and an order of possession issued in favour of the tenant by the same date.

Pursuant to a written residential tenancy agreement, the fixed term of tenancy is from October 25, 2009 to October 25, 2010. Rent in the amount of \$1,950.00 is payable in advance on the first day of each month. A security deposit in the total amount of \$950.00 was collected as follows: \$500.00 on October 13 and \$450.00 on October 16, 2009.

Arising from rent which remained overdue on December 1, 2009 in the total amount of \$3,900.00, the landlord issued a 10 day notice to end tenancy for unpaid rent dated December 2, 2009. The notice was served by way of posting on the tenant's door on that same date. A copy of the notice was submitted into evidence. Subsequently, the landlord testified that the tenant has made no payment towards rent.

The landlord also seeks to recover unpaid utilities in the amounts as follows:

- i) hydro for November of \$94.90 and
- ii) Telus for November of \$52.17

Total: \$147.07

In the decision dated December 3, 2009, the dispute resolution officer noted that it was on or about November 16 or 17, 2009 when the tenant found that the fob(s) giving access to the elevator and her unit had been deactivated. In this regard the dispute resolution officer ordered in part, as follows:

I hereby authorize the Tenant to reduce her next rent payment, or any subsequent rent payments, by \$50.00 per day until such time as the access fob is reactivated.

In her documentary evidence for this present hearing the tenant claims her fob(s) were deactivated for a period of 24 days beginning November 16, 2009. On the basis of \$50.00 per day, the tenant claims entitlement to \$1,200.00 (24 x \$50.00).

In relation to the intercom which the tenant claims had been deactivated on or about November 12, 2009, in the previous decision the dispute resolution officer also ordered in part, as follows:

I hereby Order that the Tenant can reduce her next rent payment, or any subsequent rent payments, by \$10.00 per day until such time as the intercom is functional.

In her documentary evidence for this present hearing the tenant claims the intercom was deactivated for a period of 30 days beginning November 10, 2009. On the basis of \$10.00 per day, the tenant claims entitlement to \$300.00 (30 x \$10.00).

The tenant also claims compensation in the amount of \$2,500.00. This is comprised of \$100.00 per day which she states she paid to stay with a friend for the 25 day period between November 18 and December 12, 2009, while she insists she was unable to access her unit using the fob(s). In support of this claim she submitted a copy of a hand written letter from the friend dated January 13, 2010.

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 December 2, 2009. As the notice was served by way of posting on the tenant's door on that same date, I find that the notice is deemed to have been served on December 5, 2009. The tenant did not pay all of the rent due within 5 days of being served with the notice, and did not apply to dispute the notice within 5 days of having been served.

The tenant's application to dispute the notice was filed on December 14, 2009. During the hearing the tenant provided no testimony in support of her application for more time to file her application to dispute the notice, although in her written submission she refers to having gone into a "deep depression." As I find there is insufficient evidence to support the tenant's request for more time to file her application to dispute the notice, the tenant's application for more time is therefore dismissed. In the result, the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. I therefore 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 \$5,997.07. This is comprised of \$5,850.00 in unpaid rent combined for the months of November &

December 2009, and January 2010 (3 x \$1,950.00), in addition to unpaid utilities in the total amount of \$147.07.

Based on the documentary evidence and the conflicting testimony of the parties, I find on a balance of probabilities that the tenant has established entitlement to \$1,500.00. This is comprised of \$1,200.00 as compensation for deactivated fob(s), in addition to \$300.00 as compensation for a deactivated intercom.

On a balance of probabilities, I find there is insufficient evidence that the tenant incurred a cost of \$2,500.00 in order to compensate a friend for accommodating her during a period of time when she claims she had no access to her unit using the fob(s).

Accordingly, I dismiss this aspect of the tenant's application.

In summary, the landlord's entitlement of \$5,997.07 is offset by the amount of the tenant's entitlement of \$1,500.00, leaving a balance owing to the landlord of \$4,497.07 (\$5,997.07 - \$1,500.00). I order that the landlord retain the security deposit of \$950.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$3,547.07 (\$4,497.07 - \$950.00).

As both parties have achieved some measure of success in their applications, I dismiss their respective claims to recover the filing fee.

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord(s) effective not later than **1:00 p.m., January 31, 2010**. 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.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord(s) in the amount of \$3,547.07. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 25, 2010

Dispute Resolution Officer