

Interim Decision

Dispute Codes:

OPC, CNC, MND, MNR, MNSD, MNDC, ERP, RP, PSF, RR, and FF

Introduction

This hearing dealt with a cross application.

The Landlord filed an Application for Dispute Resolution, in which he applied for an Order of Possession; a monetary Order for damage to the rental unit; 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 fee for filing the Application from the Tenant. The Landlord withdrew his application for compensation for damages to the rental unit after he was advised that the Tenant does not have to repair damage to the rental unit until the tenancy has ended. He retains the right to make another application for damages to the rental unit once the tenancy has ended.

The Tenant filed an Application for Dispute Resolution, in which she applied to set aside a Notice to End Tenancy; for an Order requiring the Landlord to make repairs to the rental unit; an Order requiring the Landlord to provide services or facilities agreed upon but not provided; and for authority to reduce her rent in compensation for services agreed upon but not provided. The Tenant withdrew her application for an Order requiring the Landlord to make repairs and to provide services and facilities, after she was advised that the tenancy would be ending on February 28, 2009.

Both parties were represented 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 relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's application, are whether the Landlord is entitled to an Order of Possession; for compensation for cheques that were returned due to insufficient funds; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided in relation to the Tenant's application, are whether the Notice to End Tenancy that was served by the Landlord should be set aside; and whether she

is entitled to a rent reduction in compensation for facilities and services agreed upon but not provided, pursuant to sections 46 and 67 of the *Act*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 01, 2006; that the Tenant is required to pay monthly rent of \$1,000.00 on the first day of each month; and that the Tenant paid a security deposit of \$500.00 on December 01, 2006. The Landlord submitted a copy of the tenancy agreement that shows that a fridge, stove, dishwasher and laundry facilities were provided with the rental unit. The tenancy agreement also shows that the Tenant agreed to pay a \$50.00 fee for any cheque that she tenders which is returned due to insufficient funds.

The Landlord stated that he placed a Ten Day Notice to End Tenancy through the Tenant's mail slot in her front door on January 08, 2009. The Tenant stated that she located the Notice to End Tenancy on January 10th or 11th. The Notice informed that Tenant that she must vacate the rental unit on January 18, 2009 unless she pays overdue rent, in the amount of \$2000.00, or files an Application for Dispute Resolution.

Residential Tenancy Branch records show that the Tenant filed her application to dispute the Notice to End Tenancy on January 13, 2009. At the hearing the Tenant stated that she had not paid all of her rent for December of 2008 and January of 2009 due to deficiencies with the rental unit. She acknowledged that she did not have lawful authority to withhold any portion of her rent.

The Landlord stated that the Tenant still owes \$1,000.00 in rent for December of 2008; \$1,000.00 in rent for January of 2009; and \$1,000.00 in rent for February of 2009. He specifically denies receiving any money in cash from the Tenant for rent in December. He submitted copies of rent cheques from December and January that were not honoured by the Tenant's financial institution due to insufficient funds, for which he is seeking compensation, in the amount of \$100.00.

The Tenant agrees stated that the Landlord and a friend picked her up from her home on December 17, 2008 and drove her to her bank, where she withdrew \$850.00 and gave it to the Landlord for rent for December. She stated that the Landlord did not provide her with a receipt the payment, although she contends that she has a bank statement that will corroborate her statement. She agrees that she still owes \$150.00 in rent from December of 2008; \$1,000.00 in rent from January of 2009 and \$1,000.00 in rent from February of 2009.

The Tenant requested an adjournment to provide her with the opportunity to submit the bank statement from January in evidence. She was directed to provide a copy of the bank statement to the Landlord via registered mail prior to February 28, 2009. She was directed to provide a copy of the bank statement and proof of service to the Landlord to

the Residential Tenancy Branch prior to March 15, 2008. The Landlord was advised that he had the opportunity to submit written evidence refuting that bank statement to the Residential Tenancy Branch prior to March 30, 2008. In the event that the Landlord elects to submit evidence, he must also submit proof that he served his evidence on the Tenant.

The Tenant called her daughter, who is twelve years old, as a witness. The daughter stated that she was at home sometime in December when the Landlord knocked on their front door. Her mother told her that she was going to the bank with the Landlord. She stated that her mother returned in approximately five or ten minutes and then told her that she had to get money from the bank for the Landlord.

The Landlord was given the opportunity to ask questions of the witness by directing them through me. He asked the daughter if she had seen her mother give him money and she acknowledged that she had not. After the witness had hung up, the Landlord argued that the child was not a reliable witness as she had been coaxed by her mother.

The Tenant is seeking a reduction in rent due to the fact that her clothes dryer has not worked for four months. The Landlord acknowledged that the Tenant advised him that the clothes dryer had stopped working at the "end of last year". He stated that he did not have the clothes dryer repaired because it was a brand new unit that the Tenant had destroyed, so he did not feel that he should be responsible for repairing it. He stated that he did not know how she destroyed the clothes dryer and he submitted no evidence that he made attempts to have the dryer repaired.

The Tenant is seeking a reduction in rent due to the fact that her dishwasher has not worked for approximately two years. The Landlord acknowledged that the dishwasher has not worked for some time. At one point the Landlord stated that he had the dishwasher inspected but the repairman advised him that it could not be replaced without removing the counter or the cupboards, which he elected not to do because the Tenant was continually damaging his property. He subsequently stated that he did not have the dishwasher repaired because the Tenant pushed the repairman out of the way when he attempted to repair it.

The Tenant denies preventing the repairman from viewing or repairing the dishwasher.

The Landlord submitted a copy of a receipt that shows a technician viewed the dishwasher on February 14, 2008 and determined that it could not be removed without removing the counter. There is no mention on the receipt that the technician was prevented from repairing or examining the machine.

The Tenant is seeking a reduction in rent due to the fact that her refrigerator was leaking for approximately fourteen months. The Landlord stated that he was not advised that the fridge was leaking and that he had never noticed the fridge was

leaking. The Tenant submitted no evidence to corroborate her statement that she advised the Landlord of the problem not did she provide evidence to show that the fridge did not work properly.

Analysis

Section 90 of the *Act* stipulates that a document that is placed through a mail slot is deemed to be received on the third day after it is delivered. I therefore find that the Tenant received the Ten Day Notice to End Tenancy on January 11, 2009.

Section 26(1) of the *Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. The Tenant failed to establish that she had a right under the *Act* to deduct a portion of her rent and I therefore find that she was required to pay rent, regardless of the deficiencies in her rental unit.

Section 46(1) of the *Act* authorizes a landlord to end a tenancy if rent is unpaid on any day after the rent is due. The evidence shows that the Tenant did not pay all of the rent that was due for December of 2008 and January of 2009, therefore I find that the Landlord had the right to end this tenancy pursuant to section 46(1) of the *Act*. On this basis I dismiss the Tenant's application to set aside the Notice to End Tenancy and I will be granting the Landlord an Order of Possession that is effective on February 28, 2009.

As the Landlord and the Tenant agree that the Tenant owes \$2,000.00 in rent from January and February of 2009, and the Tenant will be remaining in the rental unit until the end of February, I find that the Landlord is entitled to a monetary Order in the amount of \$2,000.00.

Section 7(d) of the Regulation stipulates that a landlord can charge a fee of not more than \$25.00 for cheques that are returned by a financial institution due to insufficient funds. Section 7(2) of the Regulation stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee.

The tenancy agreement provides for a \$50.00 NSF fee, which is not authorized by the Regulation. I find that condition of the tenancy agreement regarding NSF fees does not comply with the legislation, and therefore I dismiss the Landlord's application for a monetary Order for two cheques that were returned due to insufficient funds. To be enforceable, the tenancy agreement must stipulate that the Tenant agrees to a fee of \$25.00 or less, which the Tenant has not done.

I find that the Tenant was entitled to the use of a clothes dryer during this tenancy, and that she was not provided with a clothes dryer for approximately four months. I find that the Landlord submitted insufficient evidence to establish that the Tenant damaged the

clothes dryer through misuse or neglect, therefore I find that the Tenant should be compensated for being without a clothes dryer for four months. I arbitrarily conclude that being without a clothes dryer reduced the value of this tenancy at a rate of \$50.00 per month, and I find that the Tenant is entitled to a total rent reduction of \$200.00.

I find that the Tenant was entitled to the use of a dishwasher during this tenancy, and that she was not provided with a dishwasher for approximately four months. I find that there is insufficient evidence to establish that the Tenant prevented the Landlord from repairing the machine and I find it more likely that the Landlord elected to not repair or replace the machine because the technician could not access it without removing the counter or cupboards. I find that the Tenant should be compensated for being without a dishwasher for two years. I arbitrarily conclude that being without a dishwasher reduced the value of this tenancy at a rate of \$20.00 per month, and I find that the Tenant is entitled to a total rent reduction of \$480.00.

In the absence of evidence that corroborates the Tenant's statement that the fridge did not function properly and that she advised the Landlord of the problem, I find that the Tenant is not entitled to a rent reduction for being without a fully functional fridge.

As the Applications for Dispute Resolution for both parties have some merit, I find that both parties are responsible for their own costs for filing their Applications.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective on February 28, 2009. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim of \$2,000.00, which is comprised of unpaid rent from January and February of 2009. I hereby authorize the Landlord to retain the Tenant's security deposit plus interest, in the amount of \$515.33, in partial satisfaction of this monetary claim, leaving an outstanding debt of \$1,484.67.

I find that the Tenant has established a monetary claim of \$680.00, which constitutes a rent reduction for not having the use of a dishwasher and a clothes dryer for a portion of her tenancy.

I have offset the two monetary claims and I grant the Landlord a monetary Order in the difference of \$804.67. In the event that the Tenant does not voluntarily 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.

I am reserving judgement on the single issue of outstanding rent for December of 2008, until after March 30, 2009, after I consider the written evidence that both parties have been permitted to submit.

Date of Decision: February 18, 2009