

DECISION

Dispute Codes DRI, CNC, MNDC

Introduction

This hearing was convened in response to an application filed by the tenant seeking:

1. To dispute an additional rent increase;
2. To cancel a Notice to End Tenancy given for cause; and
3. A monetary order for compensation for damage or loss in the sum of \$2,450.00.

Both parties appeared and gave evidence under oath.

Issues(s) to be Decided

Whether the landlord has cause to end this tenancy. Whether the tenant is entitled to a monetary order for compensation and whether the rent increase is appropriate.

Background and Evidence

The landlord says the tenant was allowed to move into the rental unit in mid-November 2009 but the tenancy did not officially begin, that is the requirement for rent to be paid, until December 1, 2009. The landlord testified that rent was fixed at \$750.00 and the tenant was to pay a security deposit of \$375.00 due December 1, 2009. The landlord says he has made repeated requests for the tenant to pay the deposit but, despite numerous promises to do so, the tenant has still not paid the deposit.

The tenant agrees that she has not paid the deposit. The tenant says the landlord did not remind her about the deposit until mid-December which is close to Christmas. The tenant submits that she is a single mother on social assistance and the landlord could not possibly expect her to pay \$375.00 at Christmastime. The tenant says she advised

the landlord that she would pay the deposit after Christmas. The tenant agrees that she has still not paid the deposit.

With respect to her claim for a monetary award in the sum of \$2,450.00 the tenant submits that she is claiming \$2,000.00 for "...rent already paid/no/heat/one room"; the landlord says she did not have cable all the time and she is \$200.00 for "internet \$50 per month Dec, Jan, Feb, March" and \$250.00 "cost of moving".

With respect to the claim for a \$2,000.00 rental refund the tenant says the landlord has not kept the rental unit warm enough for her and the baby. The tenant says she is unable to sleep in her bedroom at night because it is too cold. Further that the breakers supplying electricity to the rental unit are frequently tripped so that she is without power in the rental unit. The tenant says this has happened 7 or 8 times she has been living in the rental unit and in one instance she was an entire day without power as the breaker box is in the landlord's portion of the house.

The tenant produced a witness KB who was sworn and testified that she noted on 3 occasions where the rental unit was not warm. KB testified that she noted that the rental unit was warmer when the landlord himself was in his home upstairs but when he was not home the tenant's unit was not warm.

With respect to the claim for internet the tenant says her rent was to include internet service. However the landlord did not supply that service and it was necessary for her to hook-up her own service at a cost of \$50.00 per month.

Finally the tenant says if she is forced to move the landlord should pay her anticipated moving expenses of \$250.00.

The tenant made no submissions respecting her dispute of a rent increase.

In response to the tenant's application to dispute an additional rent increase the landlord submits no such rent increase has been sought. The landlord believes that the tenant is saying the \$375.00 security deposit he is requesting is an "additional rent increase" which it is not.

With respect to the claim of \$2,000.00 for loss of heat, the landlord says the tenant never complained about lack of heat prior to February. The landlord says the heat is kept on in the home at all times and the suite is usually the warmest area of the house. The landlord says that he has had a contractor inspect the rental unit and the contractor has advised that the heat is functioning properly in that room. The landlord submitted a copy of the contractor's report. The landlord says that in response to the tenant's complaint he did turn up the heat. Further, the landlord says that he has a lot of windows upstairs and occasionally when the sun would shine through and warm the house the furnace would not kick in due to the warmth. The landlord testified that he resolved this issue by keeping the fans circulating to ensure that heat was distributed evenly throughout the house. Further, the landlord says it is not true that the tenant does not sleep in her bedroom because her bedroom is directly below his and he hears her snoring, moving around and watching TV in her bedroom.

The landlord says that even if he is not home during the day, his daughter is a university student and she is frequently home at varying times of the day and she keeps the heat on in the house. The landlord produced letters from former tenants who stated that the suite was warm and services such as cable and internet were provided. One former tenant says the suite was sometimes too warm such that she would have to turn the heat down in the suite. Another letter from former tenants stated that they lived in the rental unit for 3 years during which time they did not encounter any problems with heat and any issues that did arise were dealt with promptly by the landlord.

With respect to the breakers tripping the landlord testified it is true that the breakers have been tripped since this tenant has moved in. The landlord says he has not had this

problem with previous tenants. The landlord says he has warned the tenant that she cannot operate too many electrical appliances simultaneously.

With respect to internet the landlord says he has a wireless system available in the home for the tenant to use. If she did not wish to use this system and chose to install a separate system this is her choice. The landlord says that cable is provided as well. In one instance the tenant's cable became disconnected and the tenant accused the landlord of cutting it off. The landlord called Shaw Cable who advised that they believed the tenant's daughter had chewed the cable line to her TV and this is the reason the cable was not working.

Analysis

With respect to payment of security deposits Section 47(1)(a) of the *Residential Tenancy Act* states that

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.

The evidence shows that the security deposit was due and payable on December 1, 2009 and despite promises to do so, the tenant has still not paid her security deposit. I therefore find that the landlord has cause to end this tenancy.

At the hearing of this matter the landlord requested that if the Notice to End Tenancy was upheld he be granted an Order of Possession. As the effective date on the Notice has passed the landlord is entitled to an immediate Order however the landlord testified he was willing to wait until the end of the month for the Order of Possession to take effect. I will therefore issue an Order of Possession effective 1 o'clock in the afternoon on Friday, April 30, 2010.

With respect to the tenant's claims that she was without heat such that she should be refunded \$2,000.00 of the \$3,750.00 of rent paid, I find that the tenant has failed to prove her claim. I find that the evidence shows that the heat may have fluctuated from time-to-time. However I find that the tenant has failed to show that she was without heat at all or for any significant amount of time such that she should be awarded compensation for that loss.

I make the same finding with respect to the loss of electrical services due to tripping breakers. I find it was not a significant loss and was likely caused by the tenant's own actions by plugging in too many electrical appliances simultaneously. Likewise with the tenant's claim for the cost of internet service. Based on the evidence supplied by the landlord, which I prefer, I find that wireless service was available for the tenant's use. If the tenant chose to have a separate internet connection installed for her own use, she should not expect the landlord to reimburse her for the cost of that service.

With respect to the tenant's claim for anticipated moving costs while it is true the tenant will likely incur expenses to move the reason the tenant must move is as a direct result of her own actions. As the tenant is the author of this tenancy's demise the landlord should not be expected to pay any costs towards the tenant's move.

Conclusion

The tenant's applications are dismissed.

The landlord is provided with a formal copy of an Order of Possession. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.