

DECISION

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

Introduction

This hearing dealt with cross applications. The tenant applied to dispute a Notice to End Tenancy for Cause and a Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession for cause and unpaid rent. The landlord also requested monetary compensation for damage to the rental unit, unpaid rent, damage or loss under the Act, regulations or tenancy agreement, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and confirmed service of documents upon them. Both parties were provided the opportunity to be heard and to respond to the submissions of the other party.

Both parties had witnesses appear at the commencement of the hearing and those witnesses were excused from the hearing until such time they were called. Neither party requested a witness be called during the hearing.

Issues(s) to be Decided

1. Has the tenant established grounds to cancel the Notices to End Tenancy?
2. Can the parties reach a mutual agreement to end this tenancy?
3. Has the landlord established an entitlement to an Order of Possession?
4. Has the landlord established an entitlement to monetary compensation for unpaid rent, utilities or damages?
5. Retention of the security deposit.

Background and Evidence

The parties provided undisputed testimony and evidence as follows. The tenancy commenced November 27, 2008 and the tenant paid a \$500.00 security deposit on November 20, 2008. The tenant is required to pay rent of \$800.00 on the 27th day of every month and the tenant is responsible for paying for electricity costs for the rental unit. On March 7, 2010 the landlord presented the tenant with a electric bill for \$655.87. On March 11, 2010 the landlord had the electricity disconnected to the property. On March 24, 2010 the landlord issued a 1 Month Notice to End Tenancy for Cause. On March 27, 2010 the tenant did not pay rent. On April 16, 2010 the landlord issued a 10 Day Notice for Unpaid Rent indicating rent of \$800.00 was outstanding and utilities of \$846.17 was outstanding and provided a copy of a subsequent electric bill for \$190.30.

The tenant stated she is in the process of moving out as at the time of this hearing. The tenant requested and the landlord agreed that the rental unit will be vacated and the parties will meet at the rental unit at 2:00 p.m. on April 30, 2010 for purposes of conducting a move-out inspection and returning possession of the rental unit to the landlord. The tenant did not object to the issuance of an Order of Possession to the landlord.

The tenant stated that after making her application she wished to make a subsequent application with respect to the hydro disconnection and the 10 Day Notice that was issued after making the tenant's application but that she was advised this was not necessary as she already had an outstanding dispute resolution file. The tenant explained that she intended to pay the \$655.87 hydro bill but acknowledged that she did not pay it, or the subsequent hydro bill or the rent owed as of March 27, 2010 because the landlord disconnected the hydro on March 11, 2010. The tenant was informed of her right to make a subsequent application is she feels entitled to compensation for loss of electrical service.

The landlord applied to recover unpaid rent of \$800.00 due March 27, 2010 and \$846.17 in hydro costs. In addition, the landlord claimed the rental property has been

damaged. The landlord acknowledged disconnecting the electricity with the explanation that hydro was three months in arrears and claimed that the tenant was required to pay hydro bills within two days of being provided the bill. The landlord also stated that he had requested the tenant put the hydro bill in her name a long time ago but that she never would.

The tenant claims that she had always paid hydro bills to the landlord in a timely manner until the \$655.87 bill was received but that the tenant did not initial or otherwise agree to pay the landlord for hydro within two days. The tenant acknowledged there was discussion about the hydro bill being put in her name but denied this was agreed upon.

Included in the evidence provided by the parties are copies of: the tenancy agreement, two hydro bills, the 1 Month Notice to End Tenancy, the 10 Day Notice to End Tenancy, photographs of the rental property, statements from various witnesses and written submissions of each party.

Analysis

Upon consideration of all of the evidence before me, I make the following findings. As the parties have agreed that vacant possession will be returned to the landlord at 2:00 p.m. on April 30, 2010 I find the tenancy shall end at that time and I provide the landlord with an Order of Possession to ensure this occurs. The Order of Possession is enforceable by serving it upon the tenant and filing it in The Supreme Court of British Columbia.

The tenancy agreement is clear that rent of \$800.00 is due on the 27th day of every month and since it is undisputed that the tenant did not pay rent for March 27, 2010 I find the landlord entitled to \$800.00 for unpaid rent. Although I heard the landlord disconnected the electrical service, section 26 of the Act states that a tenant must pay rent when due even if the landlord has violated the Act, regulation or tenancy

agreement, unless the tenant has the legal right to withhold rent. I do not find the tenant had the legal right to withhold rent on March 27, 2010.

The tenancy agreement is clear that electricity is not included in the monthly rental payment; therefore, the tenant is responsible for electricity costs. The landlord has substantiated that \$846.17 was incurred by the landlord for electricity provided to the rental unit up until March 11, 2010. Therefore, I find the landlord entitled to recover this amount from the tenant.

As the parties were informed during the hearing, a landlord must not terminate an essential service or facility; however, termination of a service or facility does not entitle the tenant to withhold payment of rent or utilities owed under the terms of the tenancy agreement. Rather, where an essential service has been terminated, a tenant's remedy is to make an application for dispute resolution to request monetary compensation from the landlord and for Orders for compliance, if the tenancy continues. Since the tenant did not amend her application or make a subsequent application with respect to the loss of electricity, the issue of compensation for the tenant is not before me to consider. Since the tenant is in the process of moving out of the rental unit I do not issue any orders of compliance to the landlord with respect to electrical service.

As the landlord has established an entitlement to unpaid rent and utilities, I authorize the landlord to retain the tenant's security deposit and accrued interest of \$500.86 in partial satisfaction of the amount owed the landlord. I also award the filing fee to the landlord. I provide the landlord with a Monetary Order in the amount of \$1,145.31 [$\$800.00 + 846.17 + 50.00 - 500.86$]. The Monetary Order must be served upon the tenant and may be filed in Provincial Court (Small Claims) to enforce payment.

The landlord's claim for damage to the rental unit is premature since the tenant has until 2:00 p.m. on April 30, 2010 to vacate, clean and repair any damage caused by the tenant. The landlord's claims for damages are dismissed with leave to reapply.

Conclusion

The tenancy shall end and the tenant shall return vacant possession of the rental unit to the landlord at 2:00 p.m. on April 30, 2010. The landlord has been provided an Order of Possession effective at 2:00 p.m. on April 30, 2010.

The landlord has been authorized to retain the tenant's security deposit and interest in partial satisfaction of the landlord's claims and the landlord has been provided a Monetary Order for the balance of \$1,145.31 to serve upon the tenant. The landlord's claim for damage to the rental unit has been dismissed with leave.

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: April 27, 2010.

Dispute Resolution Officer