

DECISION

Dispute Codes OPR MNR MNSD FF
 CNR OLC

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent or utilities, to keep the security and or pet deposit, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking an Order to cancel the notice to end tenancy for unpaid rent and to obtain an Order to have the Landlord comply with the Act.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail on April 13, 2009. The Tenant confirmed receipt of the hearing package and evidence sent by the Landlord.

Service of the hearing documents by the Tenant to the Landlord was done in accordance with section 89 of the *Act*. The Landlord confirmed receipt of the hearing package and evidence sent by the Tenant.

Both the Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order under sections 38 and 67 of the *Residential Tenancy Act*?

Are the Tenants entitled to an Order to cancel the Notice to End Tenancy under section 46 of the *Residential Tenancy Act*?

Are the Tenants entitled to an Order for the Landlord to comply with the Act under section 62 of the *Residential Tenancy Act*?

Background and Evidence

At the onset of the hearing a representative from the eviction company attended the hearing and stated that the Tenants moved out of the rental unit in accordance with the 10 Day Notice so there was no need for her to attend the rest of the hearing, at which time she disconnected from the hearing.

The Landlord testified the written month to month tenancy agreement began on December 31, 2009 and ended on May 3, 2010, when the Tenants were evicted for nonpayment of rent and utilities. The rent was payable on the day for the first day of each month in the amount of \$1,400.00 and the Tenants paid a security deposit of \$700.00 and a hydro deposit of \$200.00 on December 31, 2009.

The Tenant testified and argued that their tenancy did not begin until January 1, 2010, when they were given access to the unit, and ended when they vacated the rental unit prior to April 30, 2010. The Tenant confirmed the monthly rent was \$1,400.00 per month, the security deposit of \$700.00 and hydro deposit of \$200.00 were paid on December 31, 2009. The Tenant argued the Landlord refused to provide them with a copy of the tenancy agreement, move-in inspection report, and receipts for the rent and hydro payments made on March 31, 2010 for April's rent. The Tenant confirmed they were forced to move out of the rental unit after the Landlord continued to be violent towards them and after the Landlord hired the eviction company.

The Tenant confirmed that they were withdrawing their application for dispute resolution as their application no longer applies now that they have vacated the rental unit and ended the tenancy.

The Landlord stated that he has regained possession of the rental unit so he is withdrawing his request for an Order of Possession. The Landlord is seeking financial compensation for April 2010 rent in the amount of \$1,400.00 and \$438.89 for 60% of the utilities up to March 31, 2010.

The Landlord stated that he had to hire an eviction services company because the police restricted the Landlord from attending the rental unit until after the Tenants had moved out. The Landlord confirmed the eviction company served the Tenants personally on April 16, 2010 with a 10 Day Notice to End Tenancy.

The Tenant argued that the Landlord attended their rental unit on March 31, 2010, and after the Landlord became abusive, the Tenant gave the Landlord \$1,400.00 cash for April 2010 rent plus \$255.00 towards the utilities. The Tenant argued that he initially had \$245.00 in his hand to give to the Landlord; however the bills came to \$255.00 plus approximately 38 cents so the Tenant had to go upstairs to get another \$10.00. The Tenant testified that he has been after the Landlord to provide them with copies of their tenancy agreement, a copy of the move-inspection report, and to attend to repairs, and when they began to discuss these issues on March 31, 2010, the Landlord's wife refused to give them their receipt for the rent payment.

The Tenant stated that the Landlord refused to provide them with receipts for the amounts they paid towards utilities. As the Landlord refused to deal with the Tenants' requests for repairs and to provide the Tenants with copies of their tenancy agreement and move-in inspection report, they filed an application for dispute resolution on April 7, 2010. On April 9, 2010 the Landlord attended the rental unit, banging on the door, and demanding rent payment claiming he had not been paid for April's rent. The Tenant referred to his documentary evidence which included among other things, a letter from a witness who was at the rental unit on March 31, 2010, and who confirms she saw the Tenant pay his rent and utility bills, and copies of bank statements which prove the Tenants withdrew the cash, on March 31, 2010, to pay the Landlord the funds.

The Tenant testified the Landlord attended the rental unit on April 12, 2010, and after the Landlord became abusive again the Tenant called 911, at which time the Landlord started a physical altercation, assaulting the Tenant by punching the Tenant in the face. The police attended and instructed the Landlord to give the Tenants a notice of eviction, which the Landlord wrote out on a piece of paper. The police told the Landlord he could not attend the rental unit until after the Tenants had moved out.

The Tenant stated that a bailiff attended the rental unit on April 16, 2010, and served them the 10 Day Notice. The Tenant confirmed they had vacated the rental unit by April 30, 2010, and not May 28, 2010 as noted in the documentary evidence, the May date was an error.

The Landlord confirmed that he hired the eviction company on April 16, 2010, and he was withdrawing his request for an Order of Possession now that he has regained possession of the rental unit.

The Tenant testified that his family is honest and they pay their bills. The Tenant stated that he knows there were utilities still owing to the Landlord for invoices that would have been received after they vacated the rental unit and they are willing to have these utility

amounts paid to the Landlord from their deposits, but that the rest of their deposits should be returned to them.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Landlord's application

A significant factor in my considerations is the credibility of the testimony. I am required to consider the evidence not on the basis of whether the testimony "carried the conviction of the truth", but rather to assess the evidence against its consistency with the probabilities that surround the preponderance of the conditions before me.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the

probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, in the presence of conflicting testimony, I find the version of events provided by the Tenant to be highly probable given the conditions that existed at the time. That being said, I consider the Tenant's documentary evidence as proof that April 2010 rent of \$1,400.00 was paid to the Landlord on March 31, 2010 plus \$255.00 for utilities.

The testimony from the representative of the eviction company confirmed the Tenants vacated the rental unit in accordance with the 10 Day Notice which had an effective date of April 28, 2010. Therefore I find the tenancy ended at the end of April 2010 and that it did not continue into May 2010 as argued by the Landlord.

The Landlord testified that he was claiming rent for April and May 2010 and utilities in the amount of \$438.89. There was no mention of the Landlord claiming additional amounts however the Landlord provided a breakdown of his claim in his evidence which included \$895.00 eviction company charges; \$38.52 for mail charges; \$50.00 application fee,; \$529.08 utilities; \$1400.00 April rent; and \$1400.00 for May rent.

Having found the Tenants had paid the April 2010 rent, in full, and \$255.00 towards the utilities on March 31, 2010, I find the Landlord has failed to prove the test for damage and loss as listed above. Therefore I dismiss the Landlord's claim for April rent, May rent, eviction costs, and mail costs.

Having dismissed the Landlord's application, I decline to award the Landlord recovery of the filing fee.

The Tenant acknowledges responsibility of the utility costs claimed by the Landlord on invoices paid by the Landlord after March 30, 2010 for services up to the end of their tenancy. The Landlord's evidence supports he has claimed for natural gas charges invoiced on April 15, 2010 for \$90.19 (60% of \$150.32).

The Landlord failed to provide evidence in support of the remaining hydro and natural gas claim, for periods after March 30, 2010; therefore I dismiss this claim for additional utility charges.

Monetary Order - I find this Order meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposits as follows:

Natural gas charges	<u>\$90.19</u>
Subtotal (Monetary Order in favor of the Landlord)	\$90.19
Less Security Deposit of \$700.00 plus Hydro deposit of \$200.00 plus interest of \$0.00 from December 31, 2009	-900.00
TOTAL OFF-SET AMOUNT DUE TO THE TENANTS	\$809.81

The evidence supports the Landlord has refused to provide the Tenants with copies of the tenancy agreement and the move-in inspection report in contravention of sections 13 and 23 of the *Residential Tenancy Act*. After consideration of the Landlord's previous actions I hereby order the Landlord to provide the Tenants with the original documents of the tenancy agreement and the move-in inspection report and to keep copies for the Landlord's records.

Tenants' Application

The Tenant confirmed he was withdrawing his application, in full, as he has now vacated the rental unit.

Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$809.81**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the Landlord to provide the **original documents** of the tenancy agreement and the move-in inspection report to the Tenants and to keep copies for the Landlord's records.

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: May 25, 2010.

Dispute Resolution Officer