

Decision

Dispute Codes: OPR, MND, MNR, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. An Order of Possession pursuant to section 55.
2. A monetary order for rental arrears and damage to the rental premises pursuant to section 67.
3. To recover the filing fee from the landlord for the cost of this application pursuant to section 72.

Both parties appeared and were given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that she served the tenants with a 10 Day Notice to End the Tenancy and the Application for Dispute Resolution hearing package by way of personal service to the tenant. The tenant confirmed that she had been served with the 10 Day Notice, the Application for Dispute Resolution seeking an Order of Possession and a monetary order for \$1,910.00. She also confirmed that she had received a May 13, 2010 amended Application for Dispute Resolution raising the amount of the requested monetary order to \$3,370.00. The tenant said that she was prepared to speak to the amended application.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

The landlord and tenant were in agreement that the tenant vacated the rental premises on April 30, 2010. As such, there was no need to consider the landlord's application for an Order of Possession.

Issue(s) to be Decided

Whether the landlord is entitled to a monetary order for rental arrears and damage to the rental premises and a recovery of the filing fee for this application.

Background and Evidence

The landlord testified that this tenancy was established as a month to month tenancy agreement commencing on December 1, 2008. There was no written tenancy agreement. The landlord testified that rent of \$900.00 was payable on the first of each month.

The landlord testified that she asked the tenant to vacate the rental premises after she visited the property on February 24, 2010. The landlord and the tenant confirmed that the tenant did not pay rent for either March 2010 or April 2010. Both parties testified that the tenant withheld \$110.00 from her December 2009 rent to pay for work by an electrician. The landlord stated that the tenant did not notify her that she would be withholding this amount from her December rent. The landlord said that she requested a receipt from the tenant, but the tenant failed to provide a receipt to the landlord.

In her May 13, 2010 amended application for dispute resolution, the landlord is seeking a monetary order for \$3,370.00. In addition to the \$1,910.00 for unpaid rent, the landlord included the following list of items requiring repair as a result of the tenant's actions.

Item	Alleged Cost of Damage and Repair
Locks	\$ 50.00
Filling, priming, painting etc.,	400.00
Baseboards	150.00
Missing Kitchen Cupboards, doors and hardware	200.00

Bathroom mirror	30.00
Electrical work	170.00
Kitchen range and cleaning	40.00
Curtains and rod for bedroom	30.00
Yard repairs	170.00
Labour to reset garden	50.00
Range hood	60.00
Plumbing parts	30.00
Wood base under sink	20.00
Ceiling fan light fixture	60.00
Total Requested Damages and Repairs	\$1,460.00

The landlord testified that she did not conduct a move-in or move-out inspection with the tenant. The landlord did not attempt to make appointments with the tenant to conduct a move-out inspection report. Although the landlord submitted photographs of the condition of the premises before and after the tenancy, the copies faxed to the Residential Tenancy Branch were of very poor quality. The tenant did receive photographs which she maintained were of acceptable quality. Since I cannot view these photographs, I have not taken into account this evidence. However, I have considered the sworn testimony of the landlord and the landlord's witness regarding the content of these photographs.

The landlord's account of the condition of the rental premises when the tenant moved out was based on her May 2, 2010 inspection of the premises with her witness. The landlord's witness testified that the rental premises were in much worse condition when the tenant moved out than when the premises were rented to the tenant. The landlord and the landlord's witness provided oral evidence including the following conditions they noted during their May 2, 2010 inspection:

- the rental premises were dirty;
- stove was filthy with burnt on food;
- baseboards had been ripped from walls;
- doors had been removed from cupboards;
- poor painting job with paint on baseboard heaters;
- multiple holes in walls;
- a bathroom mirror had been removed and was later found broken;
- light fixtures were without bulbs;

- the yard, fencing and gate had been damaged; and
- electrical work retained by the tenant was inadequate.

The landlord and her witness testified that the premises were un-rentable as a result of the damage caused by the tenant. The landlord gave evidence that she has had to take time off from her work to restore the premises to a rentable condition.

The tenant did not question the overall condition of the rental premises at the end of her tenancy. She testified that the premises were in poor condition at the commencement of her tenancy. The tenant testified that it took her three days to clean the house before she moved into the rental premises. She said that she only agreed to rent the premises on the basis of the landlord's commitment to renovate the existing kitchen, which the tenant described as a disaster. The tenant maintained that the landlord subsequently changed her mind about investing the \$7,000.00 she had said that she would spend to update the kitchen. She said that the stove and fridge never worked. She gave evidence that she had to spend time and money to undertake basic upgrades to the rental premises to make it habitable. She testified that she assisted with the painting, removed and repaired cupboards and baseboards, and retained an electrician who she maintained repaired a broken electrical breaker in the premises.

Analysis

Monetary Order for Rental Arrears

There is no dispute that the tenant failed to pay a total of \$1,800.00 in rent for March and April 2010. The tenant's evidence confirmed that she did not seek written permission from the landlord to reduce her December 2009 rent by \$110.00 to hire an electrician. She did not submit an application for dispute resolution to allow her to reduce her rent by \$110.00 in December 2009. I do not accept that the tenant had grounds to reduce her December 2009 rent by \$110.00 to retain an electrician to perform work on the rental unit. I am making a monetary order to grant the landlords' application for unpaid rent in the amount of \$1,910.00.

Monetary Order for Damage to Rental Premises

There is little dispute between the parties that the rental property was not in good condition at the end of the tenancy. The landlord maintains that the tenant is responsible for the poor condition of the premises. The tenant has testified that the rental unit was in poor condition when she moved into this rental property and provided many examples of repairs that she had to undertake to make the unit habitable.

In considering this matter, I note that the landlord did not conduct a move-in or move-out inspection with the tenant, and did not prepare inspection reports. The landlord confirmed that there was no tenancy agreement in place, which makes it difficult to determine who was responsible for various issues in contention. The landlord provided the tenant with photographs regarding the condition of the premises before and after the tenancy. However, the faxed photographs submitted to the Residential Tenancy Branch as part of the landlord's evidence are of such poor quality that no determinations can be made on the basis of this evidence. The landlord presented a witness who inspected the property with her on May 2, 2010 and who described the landlord's photographs to confirm the poor condition of the premises following the end of this tenancy.

While the landlord says the tenant is responsible for the damage to the rental unit, the tenant has provided evidence that the rental unit was in a damaged condition at the start of her tenancy. The onus or burden of proof is on the party making the claim, the landlord, in this case. When one party provides testimony/evidence of the events in one way, and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find that the landlord has failed in her burden and I am dismissing much of her application for damage to the premises on that basis.

The absence of any move-in condition inspection report serves as a serious obstacle to the landlord's establishment of the extent of the tenants' responsibility for the condition of the rental unit at the end of this tenancy. However, I am satisfied by the evidence submitted that a number of the landlord's claims have merit. With respect to the following items, the tenant was not successful in challenging the credibility of the evidence submitted by the landlord and her witness. I am satisfied that there is

sufficient evidence that the tenant was responsible for the following costs incurred by the landlord to repair or replace these items. For that reason, I am making a monetary order in favour of the landlord that includes the following items:

Bathroom Mirror	\$30.00
Kitchen Range and Cleaning	40.00
Curtains and Rod for Bedroom	30.00
Ceiling Fan Light Fixture	60.00
Total Monetary Order for Damaged or Missing Items	\$160.00

Filing Fee

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I am making an Order in favour of the landlord as follows:

Rental Arrears for December 2009	\$110.00
Rental Arrears for March 2010	900.00
Rental Arrears for April 2010	900.00
Bathroom Mirror	30.00
Kitchen Range and Cleaning	40.00
Curtains and Rod for Bedroom	30.00
Ceiling Fan Light Fixture	60.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$2,120.00

The landlord is provided with a formal Order in the above terms. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.