

DECISION

Dispute Codes

For the tenant – CNC, CNR, MNDC, FF

For the landlord – OPR, OPC, MNR, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant seeks to cancel the 10 Day Notice to End Tenancy for unpaid rent and utilities and to cancel the One Month Notice to End Tenancy for cause. The tenant also seeks a Monetary Order for money owed or compensation for loss or damage under the Act and to recover his filing fee. The landlord seeks an Order of Possession for unpaid rent and for cause. The landlord also seeks a Monetary Order to recover unpaid rent and utilities and her filing fee.

The tenant served the landlord by registered mail on May 14, 2010 with a copy of the application and a Notice of the Hearing. The landlord served the tenant by registered mail on May 21, 2010 with a copy of the Application and Notice of Hearing. The landlord amended her application on June 17, 2010 and sent this to the tenant by registered mail on June 18, 2010. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties and the agent for the tenant appeared. All parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to cancel the 10 Day Notice for unpaid rent and utilities or the One Month Notice for cause?
- Is the tenant entitled to a Monetary Order for money owed or compensation for loss or damage?
- Is the landlord entitled to an Order of Possession on either Notice?
- Is the landlord entitled to a Monetary Order to recover unpaid rent and utilities?

Background and Evidence

Both Parties agree that this is a month to month tenancy which started on June 01, 2007. Rent for this unit is \$500.00 per month and is due on the first of each month. The tenant paid a security deposit of \$250.00 on June 01, 2007.

The landlords' application

The landlord testifies that the tenant has failed to pay rent and utilities. The landlord states the tenant paid his rent late in May, 2010 he paid \$300.00 on May 07, 2010 and \$200.00 on May 08, 2010. The landlord states she served the tenant with a 10 Day Notice to End Tenancy on May 09, 2010 for unpaid utilities. The landlord states she also pays \$50.00 towards the tenants' medical plan which she has included in the amount owing. The correct amount owing for utilities is \$194.39 only without the medical plan included. The landlord testifies that she gave the tenant copies of the utility bills when she served him with the hearing package. The landlord states the tenant has not paid the outstanding utilities and has not paid rent for June, 2010 of \$500.00. The landlord seeks an Order of Possession as the tenant has not paid rent for June, 2010 or the outstanding utilities.

The tenant disputes the landlords' testimony. The tenant testifies that he had been in a long term relationship with the landlord that has now ended. The tenant claims that he is paid up on his rent and utilities to July, 2010. The tenant claims he had an agreement with the landlord to do work on her house in lieu of rent and utilities up to the end of July, 2010. The tenant claims he painted the exterior of the house, his unit in the house, got rid of a bat problem, repaired a wall in the carport and repaired some fencing.

The landlord disputes the tenants' testimony. She states the tenant did paint the exterior of the house but this work was done in lieu of rent for four months in 2009 not 2010. The landlord states that she did not have an agreement with the tenant to stop paying rent this year.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy for cause on May 09, 2010 with an effective date of June 30, 2010. The landlord has given three reasons on this notice to end the tenancy 1) The tenant is repeatedly late paying rent. The landlord claims the tenant has paid rent late, or not at all, for each month in 2010 when he does pay it is always after the fifth of each month. 2) The tenant has jeopardized the health, safety or lawful right of the landlord. The landlord claims the tenant has threatened her and she had to call the RCMP. The landlord claims it was the RCMP who served the tenant with the Notices to End Tenancy on May 09, 2010. The landlord claims the tenant has also brought a dog into the unit and both her parents are allergic to dog hair. The tenant was told he cannot have a dog at the unit as both the landlords parents have suffered with a stroke and this could jeopardize their health. 3) The tenant has not done required repairs of damage to the unit/site. The landlord claims the tenants' dog has dug holes in the yard and the landlord states this has caused her additional work. She states she has asked the tenant to rectify this problem but he has done nothing about it. The landlord seeks an Order of Possession based on the One Month Notice to End Tenancy for cause.

The tenant disputes the landlords' testimony. The tenant states he is not late paying his rent as he had the agreement with the landlord in April, 2010 to withhold rent for work rendered and prior to that he did not pay rent late. He claims the \$500.00 paid in May was for the utilities from January to April, 2010. The tenant states he has never threatened the landlord and has no knowledge that the RCMP was called as they did not speak to him and did not serve him with the Notices. The tenant claims the dog was brought into the unit as a gift for his children with the full knowledge of the landlord while they were still in their relationship. It was after this that the landlord decided that she did not want a dog there. The tenant testifies that the dog has not damaged the yard; he clears up after the dog and has filled any holes in. The tenant states there is nothing in his tenancy agreement that states he cannot keep a dog.

The landlord seeks an amended Monetary Order for unpaid rent, of \$694.39. The landlord also seeks to recover her filing fee of \$50.00.

The tenants' application

The tenant seeks to cancel the 10 Day Notice to End Tenancy and to cancel the One Month Notice to End Tenancy. The tenant states that these problems have arisen since the breakdown of his relationship with the landlord and she is acting out of emotion.

The tenant seeks a Monetary Order. The tenant testifies that while the landlord was away in April, 2010 the toilet backed up. The tenant called the number of the landlords' plumber and he said the job was too big for him to deal with. The tenant called the landlord and she agreed he could use a different plumber. The tenants' brother who owns a renovation company came to carry out the repairs. The bill for this work was \$565.00 which the landlord paid. The tenant claims everything worked fine for a few weeks and then the toilet backed up again and raw sewage spewed into his unit. After six days the landlord brought a plumber into the unit and it was discovered that there was a separate sump pump for the unit. The tenant claims the landlord knew about this problem as it had happened before.

The tenant claims that every time the landlord used her laundry it made his toilet back up. The tenant seeks time for clearing the raw sewage, a sum for time taken off work to meet the landlords' plumbers and to rent a cleaning machine. The tenant claims a loss of wages of \$35.00 per hour for 40 hours and \$100 for cleaners and disinfectants used. The tenant also seeks a monetary award for the loss of his toilet for six days and the loss of his laundry room, which the landlord locked him out of, to a total sum of \$2,500.00.

The landlord disputes the tenants claim. The landlord agrees that the first time the toilet backed up she did pay for it and then when it backed up again she asked the tenant for the number of the plumber that had carried out the repair. The tenant refused to give this to her and the landlord states she felt the repair had not been done correctly as it only lasted two weeks. The landlord states she had to bring in another plumber at a cost to herself of \$1,134.55. The landlord states she did not refuse to fix the toilet. The landlord does not dispute that she locked the tenant out of the laundry room as she claims he would not clean up after himself or his dog and there was dog hair left in the room.

The tenants' agent (his brother) gave evidence concerning the plumbing system. The agent testifies that he owns the renovation company that did the first repair. It was found that the

plumbing has not been professional done. All the pipes are connected which causes sewage waste to come up from the bath and toilet. The tenants' agent claims he helped the tenant clear the sewage waste up. He claims they had to use a lot of chemicals to get rid of the smell. The tenants agent states he contacted the city and found that there were no permits for this unit and the plumbing has never been inspected by the city.

The landlord testifies that the plumbing was in place in this unit when the house was purchased by her parents and they have not made adjustments to it and she was unaware there was a separate sump pump or that the plumbing was not fitted by a professional plumber.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords' application for an Order of Possession based on the 10 Day Notice to End Tenancy; I find in the absence of a written agreement between the tenant and landlord concerning withholding rent and utilities in 2010 for work carried out, the burden of proving that an agreement exists lies with the person making the claim however in this case it is just the tenants word against that of the landlord and when it is just one persons word against that of the other that burden of proof is not met. This means that if the tenants' evidence is contradicted by the landlord, the tenant will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the tenant has not provided sufficient evidence to show that there was an agreement in place concerning work in lieu of rent. Consequently I find the tenant owes utilities of \$194.39 and rent for June, 2010 of \$500.00 and the 10 Day Notice to End Tenancy for unpaid rent and utilities is upheld. Therefore, the tenants' application to cancel the 10 Day Notice is dismissed. As the Notice remains in force and effect the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

With regards to the landlords application for a Monetary Order to recover unpaid rent and utilities; Section 26 of the *Act* states: a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. As the tenant has not provided any evidence to support his claim that an agreement was in place between them to deduct rent for work I find the landlord has established her claim for unpaid rent of **\$500.00** and

unpaid utilities of **\$194.39**. Consequently, the landlord is entitled to a monetary award to recover these amount from the tenant pursuant to section 67 of the *Act*.

With regard to the landlords application for an Order of Possession based on the One Month Notice to End Tenancy for cause; In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy based on this Notice and as a result, the Notice is cancelled.

With regard to the tenants application for a Monetary Order for compensation for loss of earnings, purchase of chemicals and cleaners, loss of the use of his toilet for six days and loss of the use of the laundry room. I have applied a test for damage and loss claims:

- Proof that the damage or loss exists
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the tenant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find there is no dispute that the tenants toilet did back up on two occasions and he lost the use of this facility for six days. I find there is no evidence to support the tenants' testimony that this

happened through the actions or neglect of the landlord. The landlord took steps to remedy this situation. Section 27 of the Act states

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation

There is no dispute that the tenant was without his toilet for six days and his laundry facilities had been withdrawn by the landlord. The tenant has claimed a loss of earnings of \$35.00 an hour for 40 hours but has provided no evidence to support his claim that he earns \$35.00 per hour or that he lost 40 hours from work to clear the sewage, clean the unit, wait in for the plumber and to get a cleaning machine.

With this in mind I find the tenant has not fully established his claim for a Monetary Order for \$2,500.00. However, I find although the landlord did not terminate the tenants' toilet facility he was without use of this essential facility for six days. I do find that the landlord did terminate the tenants' use of his laundry facilities. Due to these matters it is my decision that the tenant is entitled to some compensation for the loss of his toilet and the loss of his laundry facilities. I further find the tenant is entitled to a monetary award for having to deal with the cleanup of the sewage and waste water on two occasions. With regard to the tenants claim for \$100.00 for cleaning materials and chemicals I find he has provided no receipts to verify the actual costs incurred. Consequently I have determined the tenant is entitled to the sum of \$1,250.00 only in compensation.

As both Parties have only been partially successful with their claims I find they must both bear the cost of filing their own applications. As both Parties have established a claim for a monetary award I have offset the landlords claim against the tenants claim. A monetary award has been issued to the tenant for the balance owed as follows:

Compensation for the tenant	\$1,250.00
Less rent owed for June, 2010	(\$-500.00)
Total amount owed to the tenant	\$555.61

Conclusion

The landlords' application for an Order of Possession for unpaid rent is upheld.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in partial favour of the landlords monetary claim and the tenants monetary claim. The landlords' monetary claim has been offset against the amount owed to the tenant.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$555.61**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

The tenant's application to cancel the One Month Notice to End Tenancy is upheld. The one Month Notice to End Tenancy for Cause dated May 09, 2010 is cancelled.

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: June 30, 2010.

Dispute Resolution Officer