

## **DECISION**

### **Dispute Codes**

Landlord: OPR, MNR, MNSD, MNDC, FF  
Tenant: MNDC, OLC, LAT, FF

### **Introduction**

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenant. The tenant's application was filed on May 20, 2010 for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order that the landlord comply with the *Act*, regulation or tenancy agreement, for an order permitting the tenant to change the locks to the rental unit, and to recover the filing fee from the landlord for the cost of this application.

The landlord's application was filed on June 15, 2010 for an order of possession for unpaid rent, for a monetary order for unpaid rent, for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the tenant for the cost of this application.

The parties each gave affirmed testimony. The landlord intended to rely on certain evidence which was received by the writer one day before the hearing. The tenant did not receive a copy of that evidence, and therefore, it cannot be considered and is not considered in this Decision. The tenant provided evidence, including photographs in advance of the hearing, and the landlord's agent stated that they have received copies of that evidence. Therefore, the tenant's evidence is considered in this Decision.

### **Issues(s) to be Decided**

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent?

- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?
- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to an order permitting the tenant to change the locks to the rental unit?

### **Background and Evidence**

This month-to-month tenancy began on March 1, 2010. There is no written tenancy agreement and the parties do not agree on the amount of monthly rent payable. The tenant testified that rent is payable in the amount of \$500.00 per month, and the landlord stated that rent is \$650.00 per month.

The parties do agree that on February 27, 2010 the landlord collected a security deposit from the tenant in the amount of \$350.00. When questioned about collecting more than one half of a month's rent for a security deposit, the landlord testified that he intended to deduct the \$25.00 overpayment from future rent payments, but the evidence shows that he did not.

The landlord further testified that the tenant paid \$650.00 for rent for the month of March, 2010 in cash, but does not know the date it was paid. No receipt was given. He further testified that the tenant paid \$650.00 for the month of April during the 1<sup>st</sup> week of April, 2010 in cash, and again no receipt was issued. The landlord is claiming unpaid rent for May, June and July, 2010 in the amount of \$650.00 for each month.

The tenant testified that she paid \$500.00 in cash for the months of March, April and May, 2010. The May 1, 2010 rent was delivered personally to the landlord at his residence by cheque. She stated that the landlord raised the rent for June to \$650.00,

and refused to accept her \$500.00 cheque for that month and closed the door on her. The next day she delivered the cheque again and when discovered that it was \$500.00, the landlord returned it to her by dropping it in her van.

The tenant further testified that on May 15, 2010, the landlord broke the lock on her unit, messed up her house, and she found the window open upon returning home. The landlord had changed the lock to prevent the tenant and her family from going in, but the tenant's husband went through the window. Also, the landlord turned off the power to the unit that day by turning off the breaker. The tenant had no power all week. She called the police, and a file number was provided to her. She stated that she has a 2 month old baby and a 4 year old child. She is presently using an extension cord for power, and all of the food in her fridge and freezer spoiled. Today she has no power. The power has been turned off several times. She has been cooking at another residence for her family.

The tenant also testified that on May 16, 2010 the landlord and a neighbour who was drunk forced their way into her house telling her to move out or they would throw her belongings out of the house. She stated that her child is afraid and having nightmares.

She further stated that on May 26, 2010 the landlord threw her mail in a puddle, which was witnessed by her and a friend, then at 5:12 that evening the power was turned off again. She also provided to me an alternative address for mailing a copy of this Decision because she feels the landlord has compromised her mail.

The tenant states that her life is miserable, and as a result, she intends to move out by July 31, 2010. The Tenant's Application for Dispute Resolution claims \$1,000.00 for compensation, and the tenant testified that since filing, her tenancy has been further devalued, and is now claiming \$15,000.00 for the damages suffered.

The landlord testified that on June 21, 2010 an electrician told the landlord it would cost about \$4,000.00 to do electrical repairs and would not be completed until August 7, 2010. He stated that the electrical problem is not only in the tenant's unit, but the landlord's unit as well. He did not, however, tell the tenant about contacting the

electrician because he does not want to have any conversations with her until after this hearing has concluded. He further stated that the tenant is using extension cords, which should suffice until the electrical repairs are done. He feels that the tenant has overused the circuits which have caused the power to fail.

When questioned about the allegations of entering the rental unit without the tenant's permission and without proper notice, the landlord stated that the tenant lied. The landlord also provided verbal testimony that the kitchen counter in the tenant's unit is damaged. Since the tenant still resides in the unit, I cannot deal with the landlord's claim for damages at this point, but that testimony corroborates the evidence of the tenant that the landlord entered the rental unit.

The landlord also provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in advance of the hearing. That notice states that the tenant has failed to pay rent in the amount of \$650.00 that was due on June 1, 2010. The form is dated June 2, 2010, signed by the landlord, and quotes an expected vacancy date of June 12, 2010. The notice also has a note on the bottom of the form that says, "2 attempts to serve notice in person – June 2" and shows that it was sent by registered mail.

The landlord's agent advised that the landlord has recently purchased the property, and is unaware of the *Residential Tenancy Act* and his responsibilities and obligations as a landlord.

Prior to the conclusion of the hearing, the landlord was given the opportunity to provide a copy of bank statements showing that the cash received for rent for the months of March, April and May corroborate his evidence that the monthly rent amount agreed upon at the commencement of the tenancy was \$650.00. The landlord testified that cash payments received by the tenant were deposited directly into his bank account. No such evidence was received prior to this Decision.

## **Analysis**

The landlord has very clearly breached several sections of the *Residential Tenancy Act* and must comply with the *Act* if he intends to be a landlord. Section 32 of the *Act* places the onus on the landlord to provide the tenant with, among other things, power:

**32 (1)** A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Further, Section 27 of the *Act* states that a landlord must not terminate or restrict a service if it's essential to the tenant's use of the rental unit as living accommodation. Whether the landlord caused the power failure to the tenant's suite deliberately or not is unclear, however, Section 32, as mentioned above places the onus on the landlord to ensure the tenant has power. Therefore, the tenant is entitled to a monetary order for lack of power. The tenant is also entitled to a monetary order for spoiled food as a result.

I do not accept the evidence of the landlord that the tenant lied in her evidence. The tenant's evidence is consistent and the tenant has complied with the *Residential Tenancy Act*. I find that her evidence is acceptable. I also find that the landlord did enter the unit without permission from the tenant. Section 29 of the *Act* states as follows:

**29 (1)** A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

The only exception that would apply in these circumstances is an emergency which requires the landlord to enter the unit to protect life or property, which I find did not exist

when the landlord entered the unit. Therefore, the tenant is entitled to a monetary order for breach of Section 29 of the *Act*.

I also find that the landlord unreasonably restricted access to the residential property to the tenant by changing the locks which required the tenant to access the unit by going in through a window, which is in breach of Sections 30 and 31 of the *Act*.

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment, meaning reasonable privacy, freedom from unreasonable disturbance and exclusive possession of the rental unit. I find that the landlord has not provided the tenant with her right to quiet enjoyment. She testified that her life has become miserable during this tenancy and her child is afraid and suffers nightmares from the disturbance caused when the landlord attended the unit demanding that she move out.

Dealing with the rent, the onus is on the landlord to prove the amount of rent payable and agreed upon at the commencement of the tenancy. The landlord did not prepare a tenancy agreement, and therefore is unable to prove the amount of rent. Without that proof, the tenant's evidence will be the acceptable evidence. I therefore, find that the amount of rent payable is \$500.00 per month payable in advance on the 1<sup>st</sup> day of each month.

The tenant has testified that she intends to move out of the residence by the end of July, 2010, and I find that moving out of the residence may be the only way to resolve the differences. However, I do not find that the landlord has proven his case with respect to the notice to end tenancy. I do not find that the tenant owed rent in the amount of \$650.00 on June 1, 2010, and I find that the tenant attempted to pay rent for the month of June which was refused by the landlord. Therefore, I cannot uphold the notice to end tenancy and it must be cancelled.

The landlord is required to comply with the *Act*. I order that the landlord provide the tenant with her right to quiet enjoyment until the tenancy ends, which means that the landlord must not tamper with or otherwise dispose of the tenant's mail, the landlord

must not enter the rental unit, or restrict the tenant from the use of her rental unit, or her family. The landlord must also provide the tenant with power.

I also find that the landlord is in breach of the *Act* by collecting more than one half of a month's rent for a security deposit. I do not accept the evidence of the landlord that he intended to deduct the overpayment from future rent payments or he would have done so before now.

Having heard the evidence of the parties, I find that the landlord is in breach of several sections of the *Residential Tenancy Act*, and as such, has severely devalued the tenancy. The tenant is claiming \$15,000.00 for loss of quiet enjoyment by the breaches of the landlord as well as the cost of spoiled food. I find that the tenancy has been devalued and the tenant is entitled to 25% of her rent paid back to her for having no power, 10% for the landlord's breach by changing the locks on the unit, 10% for the landlord's breach by entering the tenant's unit without notice, 10% for the landlord's breach in not providing the tenant with her right to quiet enjoyment, and \$500.00 for spoiled food due to the landlord's breach respecting no power to the rental unit. The tenant is also entitled to recover the filing fee from the landlord for the cost of this application. The tenant has not paid rent for the months of June and July, and I find that the amount of \$1,000.00 payable for those months should be set off from the amounts owing by the landlord to the tenant. I also find that the landlord has collected more money for a security deposit than allowed under the *Act* and the regulations, and I order the landlord return \$100.00 of that security deposit to the tenant.

## **Conclusion**

For the reasons set out above, I hereby dismiss the landlord's application for an Order of Possession, and the notice to end tenancy is hereby cancelled. Therefore, the application by the landlord to keep all or part of the security deposit for unpaid rent is hereby dismissed without leave to reapply.

I further order that the landlord comply with Section 38 of the *Act* as it relates to the return of the security deposit currently held in trust by the landlord when the tenancy ends.

The tenant's application for an order authorizing the tenant to change the locks to the rental unit is hereby allowed, and I order that the tenant be permitted to reduce the \$500.00 per month rent by whatever the cost is associated to changing the locks, and that the tenant provide the landlord with a receipt in lieu of the full amount of rent.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby granted. I order that the landlord pay to the tenant the sum of \$1,875.00, less the \$1,000.00 owing by the tenant for rent for the months of June and July. I order that the landlord pay the balance in the amount of \$1,025.00, including recovery of the filing fee and recovery of the security deposit overpayment, to the tenant forthwith. This order may be filed in the Provincial Court of British Columbia, Small Claims Division and enforced as an order of that Court.

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: July 27, 2010.

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Dispute Resolution Officer