

DECISION

Dispute Codes

Landlord's Application: OPR, MNR, MNSD, FF

Tenants' Application: AAT, CNC, CNR, FF, LAT, MNDC, MNSD,
MT, O, OPT, RR

Introduction

This hearing was commenced on April 23, 2010 by way of conference call to deal with cross applications by the landlord and the tenants. The landlord has applied for an Order of Possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants for the cost of this application.

The tenants have applied for an order allowing access to or from the unit or site for the tenant or the tenant's guests, for an order cancelling a notice to end tenancy for cause, for an order cancelling a notice to end tenancy for unpaid rent or utilities, for an order authorizing the tenants to change the locks to the rental unit, for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for return of all or part of the pet damage deposit or security deposit, for an order allowing a tenant more time to make an application to cancel a notice to end tenancy, for an Order of Possession of the rental unit or site, for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee from the landlord for the cost of this application.

The hearing did not conclude on April 23, 2010, and was reconvened by way of conference call on June 11, 2010.

The parties each gave affirmed testimony and were given the opportunity to cross examine each other on their evidence.

During the course of the hearing, the tenants withdrew their application for an order that the landlord allow access to or from the unit or site for the tenants or the tenants'

guests, and for an order cancelling a notice to end tenancy for cause, and the application for an order permitting the tenants to change the locks to the unit. The tenants' application for return of the security deposit is dismissed because it is premature; the tenants still reside in the rental unit.

The parties each forwarded evidence to me after the hearing was concluded. That evidence was not provided in accordance with the *Residential Tenancy Act*, and is not considered in this Decision. The only evidence considered in this Decision is evidence that I have found to be filed in accordance with the *Act*, and provided to the other party in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to an order permitting the landlord to retain the security deposit in partial satisfaction of the claim?

Are the tenants entitled to an order cancelling a notice to end tenancy for cause?

Are the tenants entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order allowing a tenant more time to make an application to cancel a notice to end tenancy?

Are the tenants entitled to an Order of Possession of the rental unit or site?

Are the tenants entitled to an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The landlord testified that in mid-September, 2004 he found the tenants squatting on his property and discovered that they had been there for about a month. The landlord

resides in Alberta. He stated that after about 2 weeks of conversations, wherein the landlord learned that a neighbour had given the tenants permission to stay on the property without the landlord's knowledge, he agreed to rent the property to the tenants for the winter in exchange for small repairs, keeping the yard clean and watching the landlord's house which is adjacent to the mobile home on the property that is rented by the tenants. He stated the tenants had 3 children and no place to go. The parties agreed that the tenants were to mow lawns, painting and general upkeep on the acreage. He also stated that they could use the firewood that was on the property so long as they replaced it in the spring, and he permitted them to use a truck box trailer that was on the property as a trailer for garbage.

On April 6, 2005 the parties entered into a tenancy agreement, a copy of which was provided as evidence which states that rent in the amount of \$500.00 is payable on the 1st day of each month. The agreement begins on March 1, 2005 and remains in effect until the tenancy is terminated.

The parties also provided documentation to show that on April 3, 2006 the landlord increased the rental amount to \$600.00 starting on August 1, 2006. The landlord testified that \$500.00 per month was agreed upon by the parties for May 1, 2005 to August, 2006 then it would increase to \$600.00 per month, however the landlord voluntarily reduced the rent by \$100.00 commencing August, 2007.

The landlord further testified that in February, 2008 no rent was received. He spoke to the tenant in May, 2008 and agreed to let it ride to the fall of 2008, and the tenants stated they would start paying after Christmas. From February, 2008 to January, 2009 no rent was paid. In February, 2009 the tenants paid \$1,100.00, and then in February, 2009 the rent went back up to \$600.00 per month.

During February, March and April, 2009, the tenants paid the landlord \$1,100.00 each of those months, which the landlord states brought the arrears from \$5,500 to \$4,000. No rent was paid from May, 2009 until the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent in October, 2009, which brought the arrears to \$7,600.00.

The landlord also testified that he issued another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 18, 2010 and at that time the arrears were \$2,700.00. March and April rent was not paid, which brought the arrears back up to \$3,900.00.

Another notice was issued for unpaid rent on May 7, 2010 which states that the tenants have failed to pay rent in the amount of \$2,400.00 that was due on May 1, 2010, and contains an expected vacancy date of May 22, 2010.

The tenants testified that the amount of the rental increase, which is not a legal rent increase, was agreed wherein the increase would go toward the security deposit for one year then the rent would go back down to \$500.00. He stated that he paid \$600.00 per month for 12 months, then went back to paying the \$500.00 per month. He further stated that after being served with the notice to end tenancy in October, 2009 the tenant deducted \$1,200.00 from the arrears that he paid extra because of the illegal increase. The landlord had told him that the rent would be increased back to \$600.00 in January, 2009 because of work required in the back yard, including a back-hoe to scrape clay and had a bobcat put in some culverts. The tenant also testified that \$3,600.00 was paid in November 2009 for the arrears from May to October, 2009.

The tenants also testified that they are entitled to damages or compensation for work done on the property, and are claiming the following amounts from the landlord:

- \$350.00 for labor for installing a hot water tank;
- An unknown amount for shovelling a 900 foot driveway;
- \$1,500.00 for painting the inside of the mobile home with 4 coats of paint, being 1000 square feet;
- \$5,000.00 for installing 640 square feet of carpeting that he received from his brother-in-law;
- \$600.00 for 150 linear feet of oak trim which he refurbished at \$1.50 per foot;
- All rent paid from March 8, 2010 for installing a fire hydrant after alerting the landlord that water was seeping from the foundation of his house which is also on the property;
- \$500.00 for rebuilding and supplying all materials for the back steps;
- \$1,500.00 for planting 6000 square feet of grass at the cost of \$.25 per foot;
- An unknown amount for replacing the floor and a wall in the living room, and replacing siding.

The tenants also state that they suffered the loss of use of the fridge and had to buy a fridge and washer and dryer. Further, the stove does not work and the landlord has done nothing to repair it. A detailed list entitled "Details of Work Not Compensated For" was provided as well by the tenants, and values the work done in excess of \$15,000.00. The tenants confirm that they have not paid any rent for the months of March, April, May or June, 2010.

The landlord did not dispute the fact that the tenants have done some improvements to the property, however did not indicate any agreement as to the costs associated with those improvements.

The tenants also stated that their rental agreement is for a certain address, which includes a house on that property, and they intend to move into that house.

The hearing did not conclude before the parties were cut off due to insufficient time remaining on the conference call hearing. The tenants had provided testimony with respect to repairs completed at their expense, however I did not hear from the landlord with respect to what repairs or amounts he agreed with or what remains in dispute.

Analysis

With respect to the amount of rent payable, I find that the notice of rent increase is not in accordance with the *Residential Tenancy Act*. The landlord's evidence that the proper increase ought to have been \$20.00 per month, not \$100.00 per month, is not acceptable. If the notice is not in accordance with the *Act*, the increase is not permissible. Therefore I find that the amount of rent payable under the tenancy agreement is \$500.00 per month.

It is clear before me that the tenants did pay rent after the notice to end tenancy was issued in October, 2009, and the landlord did not provide evidence that a receipt "For Use and Occupancy Only" was issued, and therefore the tenancy was reinstated. I do not have a copy of the second notice to end tenancy, and therefore, I have no way of

determining the legality of that document. However, the notice to end tenancy issued on May 7, 2010 appears to be a legal notice. The *Act* states that if the tenants do not pay the rent within 5 days of receiving the notice or apply for dispute resolution within that time, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be 10 days after the tenant receives the notice. I also find that the landlord issued the after this hearing was commenced, and for the purposes of the *Act*, I find that the tenants have disputed the notice.

With respect to the amount of rent due, the landlord has failed to establish exactly what rent was due, paid or not paid. I do find, however that the landlord collected rent in the amount of \$600.00 for some months, which is an overpayment of \$100.00 per month for those months. I also have the evidence of the parties that the arrears at \$500.00 per month, as at June 11, 2010 are \$1,800.00. The tenants admit that rent has not been paid, and therefore I find that the tenants owe rent and that the total arrears for those months are \$1,800.00. The tenants also owe rent for the month of July, 2010, and I award the landlord a monetary order in the amount of \$2,300.00.

The *Residential Tenancy Act* states as follows:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The evidence that is not in dispute about completing work in exchange for rent is at the beginning of the tenancy until the spring of 2005. The tenancy agreement says nothing about exchanging work for rent, and therefore, the only provision in the agreement that is enforceable under the *Residential Tenancy Act* is the payment of rent, and I further find that the tenants did not have a right under the *Act* to deduct all or a portion of the rent.

I also find that the tenants have paid no security deposit.

With respect to the tenants' claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, the onus is on the claiming party to prove:

- That the loss exists;
- That the loss exists as a result of the other party failing to comply with the *Act* or the tenancy agreement;
- The amount of the loss or damage;
- What efforts the claiming party made to mitigate such losses.

The tenants have not provided me with any receipts for the items purchased, and I have no evidence before me that the landlord failed to comply with the *Act* or the tenancy agreement with respect to work done on the property. The tenants claim that the property required certain repairs in order to be inhabitable, however, the *Act* states that the landlord is responsible for maintaining rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law and make it suitable for occupation by a tenant. If the landlord fails to do that, the tenants may make an application for an order that the landlord complete those repairs. The only repairs that the tenant is entitled to make, and reduce rent for, is emergency repairs made to protect life or property. The tenants have not made that application, however, I have not heard from the landlord what he considers to be a fair amount to reimburse the tenants for improvements done to the rental premises. Therefore, I order that the parties appear before me again at the date and time in the attached notice to present evidence and submissions about those repairs.

The tenants have made an application as well for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided. I have no evidence that any of the repairs made were agreed upon, or that I have any jurisdiction to award payment to a tenant for work. The tenants may very well be entitled to compensation for work from the landlord, but that claim cannot be attached to the *Residential Tenancy Act* or the dispute resolution process.

I also find that the tenancy is for the mobile home, not the adjacent house on the property and the tenants have no rights to that house under the *Act* or the tenancy agreement.

The landlord is entitled to an Order of Possession for unpaid rent, and I order that the tenants vacate the property on or before July 31, 2010.

Conclusion

The tenants' application to cancel a notice to end tenancy for unpaid rent or utilities is hereby dismissed without leave to reapply. I also grant the landlord an Order of Possession effective July 31, 2010.

The tenants' application for compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby adjourned, and I order that the parties appear before me at the date and time indicated on the attached notice for the purpose of hearing submissions and evidence from the parties with respect to that part of the tenants' application alone.

The tenants' application for an Order of Possession is hereby dismissed without leave to reapply.

The tenants' application for reduced rent for repairs, services or facilities agreed upon but not provided is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent is hereby awarded at \$2,300.00. The landlord is also entitled to recover the filing fee for the cost of this application, and I order that the tenants pay to the landlord the sum of \$2,350.00. 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 09, 2010.

Dispute Resolution Officer