



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, MNDC, FF

Tenants: CNR, MNDC, ERP, RP, PSF, LRE, RR

Introduction

This hearing was convened 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; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; 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 cancelling a Notice to End Tenancy for unpaid rent or utilities; 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 make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order that the landlord provide services or facilities required by law; for an order suspending or setting conditions on the landlord's right to enter the rental unit; and for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenants provided an amended Application for Dispute Resolution on September 21, 2010 to include a claim for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, a request for emotional distress, stolen mail and moving costs. The tenant's application to amend the claim is hereby allowed.

Further, the landlord provided documents of evidence and the tenants acknowledged receiving a copy of those documents. The tenants also provided evidence that was not acknowledged as being received by the landlord. The tenant provided evidence to support their claim that the evidence was sent September 21, 2010 by registered mail to the landlord and provided a tracking number for that mailing.

The landlord company was represented by two agents, and the tenants both attended the hearing. All parties gave affirmed evidence and were given the opportunity to cross examine each other on their evidence. All evidence received prior to the hearing has been reviewed and is considered in this Decision.

The tenant continued to supply additional evidence after the hearing concluded. None of that evidence has been reviewed or is considered in this Decision.

Issues 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 a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- 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 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 that the landlord make emergency repairs for health or safety reasons?
- Are the tenants entitled to an order that the landlord make repairs to the unit, site or property?

- Are the tenants entitled to an order that the landlord provide services or facilities required by law?
- Are the tenants entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?
- 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

This month-to-month tenancy began on May 17, 2010. Rent in the amount of \$825.00 is payable in advance on the 1st day of each month. The landlord also collected a security deposit from the tenants in the amount of \$412.50 on May 12, 2010. No move-in condition inspection report was completed.

The landlord testified that on August 1, 2010 she asked the tenant for the rent, but he didn't have it. She asked again on August 2 and August 3, and the tenant asked the landlord to sign a welfare form, but she refused. The following day she asked for the rent again and the tenant responded that if the landlord would give an eviction notice the rent money would be paid faster. The husband landlord gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which he testified he served personally on August 5, 2010. A copy of that notice was provided in advance of the hearing.

The landlord further testified that the tenants did not pay rent for the month of September. They further testified that other tenants in the building are being disturbed by the tenant jumping on the floor early in the morning. Other neighbours have also complained. She further testified that she met 2 strangers on the property who told her that they live with the tenant, and all have keys to the unit.

The landlord also testified that the tenant told her to go ahead and try to get him out of the rental unit. She tried to inspect the unit, but the tenant refused to let her in. He then followed her, walking toward her in a threatening manner saying, "Try to get me out."

The landlord has a manger for the building who also resides in the building. The landlords do not reside in the building, and the resident manager did not attend the hearing to give evidence.

The landlord is seeking an Order of Possession and a monetary order for unpaid rent in the amount of \$2,475.00, being \$825.00 for the months of August, September and October, 2010.

The landlord also testified that the tenant had complained that the fridge was not working properly on July 16, 2010, and was replaced on July 19, 2010. At no time did the tenant tell the landlord that food had spoiled.

The tenant testified that when the suite was initially viewed, the landlord promised certain repairs and cleaning in the unit, however when he and his family arrived to move in, none of those repairs had been completed and a ladder remained in the living room. He further testified that he asked the landlord to complete a move-in condition inspection report but she refused stating that it wasn't necessary.

The tenant prepared a letter dated June 1, 2010 and testified that he placed a copy under the door of the manager's apartment, which is also how rent was paid. He also mailed a copy to the landlords. A copy of that letter was provided in advance of the hearing and requests a number of repairs. He stated that he received no response from the landlord after the resident manager said she would talk to the landlord. He mailed another letter on July 1, 2010 to the landlord and placed a copy under the resident manager's door.

The tenant also testified that the landlord had told him that the keys for the mailbox had been changed, and he feels that the previous tenant had stolen his mail, he did not get his hydro bill and his hydro was disconnected.

He further stated that the stove vent does not work and causes the fire alarm to sound and leaks onto the stove when it rains. The tenant provided photographs and explanations of problems with the rental unit, including the broken fridge and spoiled food at a cost of \$300.00; a broken inside lock which had to be replaced at a cost of \$50.00; broken glass in the sliding glass door; toilet and taps leaking in the bathroom; holes in the walls that were never repaired; closet shelves falling down; the washer and dryer require repairs; front and back door locks to the building have not been changed after previous tenants have moved out; drapes not installed which were to be included in the rent; failure to clean the unit prior to the tenants moving in; bugs and black mould around the shower, tub and bathroom ceiling; broken dishwasher rack; broken kitchen drawer; failure to install screens on the windows; needles on the walkway; leaky roof in the bathroom, kitchen, hallway and living room; failure to paint the unit as promised by the landlord; and exterior and interior lights not working consistently.

The tenant withheld rent for the month of September stating that he was awaiting the results of this hearing.

The tenant is claiming \$1,500.00 for emotional distress, \$1,000.00 for stolen mail, moving costs in the amount of \$1,000.00 to \$1,500.00.

Analysis

The *Residential Tenancy Act* is clear with respect to the payment of rent. Firstly, Section 26 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.

Further, the *Act* states:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

And further,

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Therefore, with respect to the notice to end tenancy, the tests to be met are whether or not the tenants paid the rent or made application for dispute resolution within 5 days of receiving the notice, and whether or not the landlord has used the approved form. I find that the notice is valid, the tenant did not pay the outstanding rent or apply for dispute resolution within the 5 days allowed under the *Act*, and are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Therefore, I find that the landlord is entitled to an Order of Possession.

I also find that the tenants are in arrears the sum of \$2,475.00 and the landlord is entitled to a monetary order for that amount, up to and including October 31, 2010.

The landlord has failed to comply with Section 23 of the *Act* by failing to complete a move-in condition inspection report and therefore, pursuant to Section 24, the landlord's right to claim against the security deposit for damages is extinguished. However, the landlord's right to claim against the security deposit for unpaid rent is not extinguished.

With respect to the tenants' application, where I have upheld the notice to end tenancy, the tenants' application to cancel the notice to end tenancy must be dismissed.

With respect to the tenants' application for a monetary order, firstly, I find that the tenant has not established that the landlord is responsible for any stolen mail and therefore the claim for \$1,000.00 must be dismissed. With respect to emotional distress, the plaintiff must show not only that the premises were unsafe but also that the hazard created caused injuries suffered by the tenants. Further, Residential Tenancy Guideline 16: *Claims in Damages* sets out the types of damages a Dispute Resolution Officer can order. In addition to pecuniary damages, which are out-of-pocket expenditures of the applicant, in rare cases the Dispute Resolution Officer may award aggravated damages, if specifically sought by the applicant. The guideline further advises that a Dispute Resolution Officer does not have the authority to award punitive damages, to punish the landlord and I do not have the jurisdiction to award damages for non-pecuniary losses. However, I do find that the landlord promised certain repairs to the unit prior to the tenants moving in and did not complete those repairs, and therefore the tenants are entitled to rent abatement. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. I find that the equivalent of one month of rent is fair in the circumstances.

Conclusion

I hereby grant an Order of Possession in favor of the landlord effective October 31, 2010 at 1:00 p.m. The tenants must be served with the Order of Possession. If the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I find that the landlord has established a claim for \$2,475.00 in unpaid rent from August 1, 2010 to October 31, 2010.

The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and their application for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided are hereby awarded at \$825.00, which will serve to satisfy the tenants' claim for moving expenses.

I order that the landlord retain the deposit and interest of \$412.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,237.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants' application for an order cancelling the notice to end tenancy is hereby dismissed without leave to reapply. The balance of the tenants' application is hereby dismissed without leave to reapply.

Since both parties have been partially successful in their claim, I decline to order that either party recover the filing fee for the cost of this application.

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: October 18, 2010.

Dispute Resolution Officer