



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Dispute Codes

Landlord; OPR, MNR, MNSD, MNDC, FF
Tenant: MNDC, ERP, LRE, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep the security deposit in partial satisfaction of their claim, for money owed or compensation for damage or loss under the Act and to recover the filing fee for this proceeding from the Tenants.

The Tenants filed seeking a Monetary order owed or compensation for damage or loss under the Act, make emergency repairs for health or safety reasons, suspend or set conditions on the landlord's right to enter the rental unit and to recover the filing fee for this proceeding from the Landlord.

Service of the hearing documents by the Landlord to the Tenants were done by personal delivery in accordance with section 89 of the Act. The Tenants confirmed receipt of the Landlord's hearing package.

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The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing and in documentary form.

Issues to be Decided

Landlord:

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for a loss of rental income?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Tenants:

1. Are the Tenants entitled to compensation for damage or loss under the Act, and if so how much?
2. Are the Tenants entitled to compensation for emergency repairs?
3. Should there be conditions set on the Landlord's right of enter to the rental unit?

Background and Evidence

This tenancy started on August 1, 2009. Rent is \$750.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$375.00 on August 1, 2009.

The Landlord said she did not understand English very well so she had a friend to act as a translator for her at the hearing. Through the Translator the Landlord said the Tenants did not pay rent for August, 2010 when it was due and as a result, on August 10, 2010 she personally delivered a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 10, 2010. The Landlord said the Tenants have not paid rent for August and September, 2010.

The Tenant said at the outset of the hearing that they were moving out of this rental unit tomorrow September 17, 2010. They said they were moving out because the rental unit had a mold problem which made them sick and the Landlord would not make repairs to the rental unit. The Tenant indicated that they had been treated by their doctor in January, 2010 and he had said their lung infections were caused by mold. The Tenants continued to say that there was no written tenancy agreement, no move in inspection report was done although a verbal move in inspection was done. They said the landlord promised to repair the bathroom specifically the floor and toilet, fix a broken window and clean up the mold issue. The Tenants presented photographic evidence that these repairs were not done and the Landlord agreed she had not made repairs to those items. The Landlord said those items did not need repair.

The Tenants continued to say they had not spent any money to make repairs as they are a low income family and expected the Landlord to pay for and make any repairs to the rental unit. As a result they withdrew their application for Compensation for Emergency Repairs for Health and Safety reasons.

The Tenants also said they would withdraw their application for Conditions on the Landlord's Right to Enter the rental unit as they are moving out tomorrow,

September 17, 2010. The Tenants said they had moved most of their belongings out of the unit already.

The Tenants continued to say they had approached the Landlord with a letter to end tenancy dated August 1, 2010 and an application for another occupant to stay at the rental unit dated August 1, 2010, but the Landlord would not sign them. The Landlord said she did not understand the documents, although she had her translator with her.

The Tenants said they have made a monetary claim of \$4,500.00 which represents $\frac{1}{2}$ of the total rent paid over the tenancy. They said they are claiming this because the Landlord did not fix the bathroom, the carpets, the broken window and the mold issue.

There was testimony of two witnesses for the Tenants. The Tenants' social worker, who was required to inspect the rental unit as part of her service to them wrote a letter in the evidence stating the bathroom need repair and that there was a mold problem in the unit. She said the Landlord's son, who was working at the unit, assured her these problems would be fixed after the Tenants moved in. The Social Worker said she did not recommend the Tenants move in, but the location was what they wanted so she agreed to the rental of the unit. The Second witness was a boarder/occupant of the Tenant's rental unit. He testified that he moved in with the Tenants on August 1, 2009 and he said the bathroom needed repairs and there was a mold problem in the unit.

The Landlord said she repaired a leak in the toilet and in the sink in the bathroom in July of 2010. The Tenants agreed that these repairs were done.

Analysis

Section 46 of the Act states that within 5 days of receiving A Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46 (5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

The Tenant was served the Notice to End Tenancy in person on August 10, 2010. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 15, 2010. The Tenants' did neither by August 15, 2010, but did make an application dated August 26, 2010.

I find that the Tenant has not paid the overdue rent and did not apply for dispute resolution within the time limits. Consequently, I find pursuant to s. 55(2)(b) of the

Act that the Landlord is entitled to and Order of Possession to take effect 48 hours after service of it on the Tenant.

Section 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 the right under this Act to deduct all or a portion of the rent.

I find that the Tenant has not paid the overdue rent when due. The Tenant had opportunity to apply to the Residential Tenancy Branch to seek compensation to pay for emergency repairs to the rental unit or to hold back rent until the Landlord completed repairs to the unit, but the Tenants did not do this. The Tenants have now chosen to move out of the unit. The Tenant does not have the right under the Act to with hold all or a portion of the rent.

I find that the tenant did give the Landlord notice to end the tenancy dated August 1, 2010 and personally delivered on August 8, 2010. The Tenants are moving out September 17, 2010, which is deemed to be the end of the Tenancy. Therefore the Tenants owe unpaid rent for August, 2010 of \$750.00 and unpaid rent until September 17, 2010. The amount of unpaid rent for September is $\$750.00 \times 17$ of 30 days in September or $\$750.00 \times 17/30 = \425.00 .

As the landlord has been successful in the matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38 and 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows.

Rent arrears: August	\$ 750.00
September	\$ 425.00
Filing Fee	<u>\$ 50.00</u>
Subtotal	\$1,225.00
Less	
Security Deposit	<u>\$ 375.00</u>
Balance Owing	\$ 850.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$850.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

This decision is made on the authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Residential Tenancy Act.