



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNR, MNDC, OLC, ERP, RP, RR

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy, for monetary compensation for damage or loss under the Act, costs of emergency repairs, for the Landlord to comply with the Act, to make emergency repairs and other repairs and to allow the Tenant reduced rent for the costs of the repairs.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 16, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenant and the Landlord in attendance.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is the Tenant entitled to compensation for damage or loss under the Act?
3. Is the Tenant entitled to compensation for repairs and if so how much?
4. Is the Tenant entitled to reduced rent as compensation for the costs of repairs and if so how much?

Background and Evidence

This tenancy started on July 15, 2010 as a 6 month fixed term tenancy with an expiry date of December 31, 2010. Rent is \$900.00 per month payable in advance of the 1st day of each month. The Tenant said he paid a security deposit of \$450.00 on July 15, 2010.

The Landlord said that the Tenant did not pay \$450.00 of rent for July, 2010 and \$900.00 of rent for August, 2010 when it was due and as a result, on August 11, 2010 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated August 10, 2010 on the door of the Tenant's rental unit. The Landlord said the Tenant has unpaid rent for July, August and September, 2010.

The Tenant said that he did not pay the rent because the Landlord did not clean and paint the rental unit on the Tenant's move in and that there were repairs to the unit that

Residential Tenancy Branch
Ministry of Housing and Social Development

were not done. The Tenant said that the fridge did not work, the toilet leaked and the sink did not drain properly. The Tenant said he did not spend more than \$25.00 on repairs and supplies to correct the problems. The Tenant continued to say that he lost \$220.00 in food when the fridge did not work and that he has included that loss as a monetary claim in his application.

The Tenant concluded by saying that he wanted to move out and that he would like 10 days to find a new place.

The Landlord said that the rental unit was dirty when they showed it to the Tenant and that they spent \$300.00 on cleaning and removal of the previous tenant's things on July 14, 2010 one day before the Tenant moved in. As well, the Landlord said they had tried to arrange a move in condition inspection, but the Tenant did not respond to their requests. The Landlord continued to say that they replaced the fridge in the rental unit the day after the Tenant told them about the broken fridge, first with a fridge from an empty rental unit, then with a new fridge. The landlord indicated they contacted the Tenant about painting the unit, but were unable to paint all the walls as they could not get access to paint. The Landlord said one wall was painted.

The landlord concluded that the Tenant has not paid any rent since he moved in and the Landlord requested an Order of Possession.

Analysis

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 and does not have an Order from the Residential Tenancy Branch permitting him to withhold his rent. Consequently, I find that there are no grounds for the Tenant's application to cancel the 10 Day Notice to End Tenancy dated August 10, 2010 and it is dismissed without leave to reapply. Accordingly, as the Landlord requested an Order of Possession at the hearing, I find pursuant to s. 55(1) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

Section 7 (2) says a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch
Ministry of Housing and Social Development

I find that the Tenant has not established grounds or tried to minimize the loss or damage under the Act as the Landlord supplied a replacement ridge within a reasonable amount of time, so the monetary claim of \$220.00 for food loss is dismissed without leave to reapply.

In addition, I find that the Tenant's claim for emergency repairs, other repairs and rent reduction are unfounded as he said that he spent a minimal amount of money to correct the issues. I find these claims are dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed without leave to reapply.

An Order of Possession effective 2 days after service of it on the Tenant has 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.

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*.
