



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, FF
Tenant: CNR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with cross applications filed by the landlord and the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities; for 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 tenant for the cost of this application.

The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for the cost of emergency repairs; 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 landlord for the cost of this application.

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

The parties each also provided an evidence package in accordance with the Rules of Procedure, which was provided to each other, and each provided a second evidence package which was not received by the Residential Tenancy Branch in accordance with the Rules of Procedure. All evidence, with the consent of the parties, has been reviewed and is considered in this Decision.

During the course of the hearing, the parties testified that the tenant vacated the rental unit on October 1, 2010, and therefore the landlord is no longer requesting an Order of Possession and the tenant is no longer requesting that the notice to end tenancy be cancelled, and I dismiss those portions of the party's applications.

Issues(s) to be Decided

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?

Is the tenant entitled to a monetary order for the cost of emergency repairs?

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

Background and Evidence

This month-to-month tenancy began on September 3, 2001 and ended on October 1, 2010. Rent had originally been payable in the amount of \$700.00 per month, but was reduced in March, 2005 to \$675.00 per month. Rent is payable in advance on the 1st day of each month. On August 11, 2001 the landlord collected a security deposit from the tenant in the amount of \$200.00.

The landlord testified that for the period of March, 2005 to August, 2010 the tenant should have paid rent in the amount of \$44,550.00 and only paid \$39,379.00, leaving a balance due of \$5,171.00. The landlord does not collect the rent every month, and sometimes went several months before collecting rent. Also, the tenant often paid rent in instalments of \$2,000.00, \$3,000.00 or \$4,000.00 or more when the landlord arrived to collect rent.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 2, 2010 by leaving it personally with the tenant's son, who apparently resided in the rental unit. That notice states that the tenant has failed to pay rent in the amount of \$8,036 that was due on September 1, 2010, is dated September 2, 2010 and contains an expected date of vacancy of September 2, 2010. The notice also contains a hand-written note that says, "See written Page 1 & 2 from March 2005 – July 2010 Bal. 8696.00 Terasen gas bill Aug 2010 Bal 8036.00." The landlord also provide a

document entitled "Transaction History" which shows payments due and made, broken down by years, commencing with 2001. He also provided copies of receipts as well as cheques written by the tenant to support his claim.

The landlord further testified that the tenant had a number of improvements or repairs completed on the rental unit, which were done without his knowledge or his consent. He further stated that the tenant purchased a new fridge for the unit without giving the landlord the opportunity to repair or replace that appliance.

The tenant testified that natural gas was to be included in the rent, and she paid those gas bills on behalf of the landlord and deducted those amounts from the rent due. She provided a number of Terasen Gas bills and a spreadsheet to support her claim. The spreadsheet also includes a number of repair items which includes a new fridge, filing cost, printing cost, cost of obtaining an account history, and states that the landlord owes the tenant \$6,508.89.

Analysis

I agree with the landlord's claim that the tenant ought to have paid \$44,550.00 for the period of March, 2005 to August, 2010 inclusive.

I have reviewed the summary sheets provided by the landlord and the tenant and find that the parties agree to the amounts of rental payments made from December 5, 2006 to July 31, 2010, which total \$35,179.00. I also find that the landlord has deducted Terasen Gas Bills in the amount of \$1,335.00 for 2009, but has not included other gas bills paid for the entire period of December 5, 2006 to July 31, 2010 inclusive. I have added the gas bills on the tenant's spreadsheet for the same period, and I find that the tenant paid a total of \$5,514.88 to Terasen Gas.

The landlord's Transaction History shows that he is claiming rent from March 5, 2005 as that is the date that the rental rate was changed to \$675.00 per month. If I accept that the first payment the tenant made towards rent after March 5, 2005 was on December

5, 2006, the tenant paid \$35,179.00 + \$5,514.88 for Terasen Gas, for a total of \$40,693.88. The total rent that the landlord should have collected for that time period is \$43,875.00. The difference amounts to \$3,181.12 due to the landlord.

I find that the tenant's claim for a heat pump and hot water tank were emergency repairs, however, I accept the evidence of the landlord that the remaining repairs and improvements were done without his knowledge and without his consent, and therefore the tenant ought not to be successful in the claim for repairs. Further, in order to be successful, the tenant would be required to prove that the landlord either promised to do the repairs, or that they were emergency repairs. Section 33 of the *Residential Tenancy Act* states that a tenant may have emergency repairs made only when they are needed, the tenant has made at least 2 attempts to contact the landlord, and the tenant gave the landlord reasonable time to make the repairs. I find that the tenant has failed to establish that the renovations and repairs were not emergencies with the exception of the hot water tank and heat pump, and is therefore only entitled to be reimbursed for those two items. With respect to the fridge purchased by the tenant, I find that the tenant is entitled to retain that appliance. I leave it to the parties to determine whether the tenant will recover the appliance, or the landlord will reimburse the tenant for its cost.

Conclusion

I hereby grant the tenant a monetary order in the amount of \$950.00 for the heat pump and the hot water tank. I also find that the fridge purchased by the tenant belongs to the tenant.

I hereby grant the landlord a monetary order in the amount of \$3,181.12. I further order that the landlord's entitlement be off-set by the monetary order due to the tenant. I order that the landlord retain the security deposit and interest in the amount of \$209.53 and grant the landlord an order for the balance of \$2,021.59. This order may be filed in

the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Since both parties have been partially successful, 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 27, 2010.

Dispute Resolution Officer