



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, CNR, MNR, MNDC, RP, OLC, RR, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent; for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order requiring the Landlord to repair the rental unit or site; for authorization to reduce rent for repairs, services, or facilities agreed upon but not provided.

The female Tenant stated that the application to reduce rent for repairs, services, or facilities agreed upon but not provided duplicates the application for a monetary Order for money owed or compensation for damage or loss. On this basis, I will determine whether the Tenant is entitled to financial compensation for being without repairs, services, or facilities agreed upon but not provided.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

After being advised that the tenancy would be ending on the basis of the Landlord's Notice to End Tenancy for Unpaid Rent, the Tenant withdrew her application for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement and for an Order requiring the Landlord to repair the rental unit or site.

Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy for Unpaid Rent should be upheld; whether the Landlord is entitled to an Order of Possession for unpaid rent; whether the Landlord is entitled to a monetary Order for unpaid rent; whether the Tenant is entitled to a monetary Order for deficiencies with the rental unit/site; and whether either party is entitled to recover the fee for filing their Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act* (Act).

Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on June 02, 2007 and that the Tenant is currently required to pay monthly rent of \$1,555.00 on the second day of each month.

The Agent for the Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of October 06, 2010, was posted on the door of the rental unit on September 23, 2009. The Notice declared that the Tenant owed \$2,990.00 in rent that was due on September 02, 2009.

The Agent for the Landlord and the Tenant agreed that on September 02, 2010 the Tenant owed rent of \$2,990.00 and that she paid \$890.00 towards this debt in September of 2010, which reduced this debt to \$2,100.00.

The Agent for the Landlord and the Tenant agreed that no rent was paid for October of 2010, bringing the rent arrears to \$3,655.00.

The Agent for the Landlord and the Tenant agreed that no rent was paid for November of 2010, bringing the rent arrears to \$5,210.00. The Agent for the Landlord asked to amend the Application for Dispute Resolution to include a claim for compensation for unpaid rent for November of 2010. The Tenant did not dispute the request for an amendment and the Application for Dispute Resolution was amended accordingly.

The Tenant is claiming compensation, in the amount of \$400.00, for being without water for a period of approximately two weeks in December of 2009. The female Tenant stated that water to the rental unit is provided by an on-site pump; that approximately two weeks before Christmas the pump failed; that she advised the Landlord of the problem on a Wednesday or a Thursday; that a tradesperson contacted her and advised her that he would attend to the problem on the following Monday; that the tradesperson did not appear on the following Monday; that she eventually arranged to have a plumber repair the pump; that she does not know the exact date of the repairs; that the Landlord paid for the costs of the repairs; and that they were without running water for a period of at least two weeks, likely more. She stated that this had a significant impact on her family, as she has three children and it made it difficult to feed and bathe them without running water.

The Agent for the Landlord stated that he did not manage the rental unit in December of 2009 so he has no direct knowledge of this claim; that he understands that the pump failed because of a clogged filter; that he understands spare filters had been left with the Tenant and that the Tenant should have changed the filter; that he believes the Tenant would have been given authorization to change the filter if it had been requested by the Tenant; and he does not know how long the Tenant was without water as a result of the clogged filter. The Agent for the Landlord argued that the claim of \$400.00 is excessive for the inconvenience experienced by the Tenant.

The Tenant is claiming compensation, in the amount of \$1,500.00, for the inconvenience of living with a defective septic system for approximately nine months. The Agent for the Landlord and the Tenant agree that the septic tank was damaged in 2008 and that the tank was replaced as a result of that damage. The male Tenant contends that the new septic tank was improperly installed; that after the septic tank was installed one of the sewage pipes exiting the rental unit did not drain properly, causing sewage to pool near the house; that in January of 2009 a tradesperson hired by the Landlord attempted to remedy the problem with the pipe by covering it with dirt but he had advised the male Tenant that the pipe had been improperly connected to the septic system; that in March of 2009 a plumber came to the rental unit to repair a toilet that was repeatedly backing up, which the Tenant believes was related to the failing septic system; that the septic tank began overflowing in 2010; that the issues were repeatedly brought to the attention of the Landlord; that the problem with the sewage pipe that does not drain properly has never been rectified; and that the septic tank stopped leaking after it was pumped out in July of 2010.

The Tenant submitted a photograph of the septic tank with sewage leaking out of it. The male Tenant stated that the septic tank often leaked when the toilet was flushed or a significant amount of water was used over a period of six or seven months. He stated that this restricted their use of the yard, due to health concerns and the unpleasant odour. The Tenant submitted no photographs of the area where sewage was pooling as a result of the pipe that was allegedly improperly connected to the septic tank. The male Tenant stated that the septic from this pipe pooled near the rental unit and that the smell from the septic made sitting outside unpleasant. He stated that the faulty septic system frequently caused the toilet to back up when it was flushed.

The Agent for the Landlord initially stated that the Landlord had not been informed of any problems with the septic system after it was replaced until June of 2010, at which time they arranged to have the septic tank pumped. He subsequently acknowledged that further repairs to the septic system were completed in January of 2009; that repairs were made to plumbing in March of 2009; and that the septic tank was pumped out in July of 2010.

The Tenant is claiming compensation, in the amount of \$1,075.00, for being without a stove/oven for a period of approximately three months. The male Tenant stated that the stove and oven in the rental unit, which are operated by gas was rendered inoperable

by a broken gas line and regulator. He stated that he advised the Landlord of the problem at the end of May of 2010 but the problem was not fixed until the end of August of 2010. He stated that he asked for permission to repair the problem; that permission was not forthcoming; and that when he subsequently realized there was a problem with the regulator he realized he did not have the skills to repair the stove.

The Agent for the Landlord originally stated that he did not learn about a problem with the stove until he attended the rental unit on July 06, 2010. He stated that he did not manage this property prior to July 01, 2010 and he does not know when the Tenant advised the Landlord of the problem with the stove. He stated that the stove was repaired on August 30, 2010. He stated that there was a delay in repairing the stove, in part, because the Tenant advised that they were cooking with a hot plate and that the Tenant told him he would repair the stove himself.

The male Tenant stated that he sent an email to a former agent for the Landlord, dated June 24, 2010, specifically requesting permission to repair the stove. A copy of that email was submitted in evidence. The Agent for the Landlord stated that he had been told that the Tenant had been given permission to repair the stove and he assumed that the Tenant would repair it. He stated that he did not personally give the Tenant permission to repair the stove when he was advised of the problem on July 06, 2010.

The Tenant is claiming compensation, in the amount of \$1375.00, for being without hot water for a period of approximately two months. The female Tenant stated that in July of 2010 they noticed there was only warm water coming from the hot water tank; that in July or August their hot water tank stopped working entirely; that the Agent for the Landlord was advised of the problem on July 01, 2010; and that the problem was rectified in September of 2010.

The Agent for the Landlord stated that he was advised that the hot water tank failed on August 10, 2010; that they had difficulty determining the exact cause of the problem; that they eventually determined that there was a leak in a pipe under the concrete; and that the problem was rectified on September 12, 2010. The Landlord submitted a receipt for repairing the hot water tank, which was dated September 12, 2010.

The Tenant is claiming compensation, in the amount of \$700.00, for hydro costs incurred as result of hot water leaking in the rental unit. The Tenant submitted a copy of a hydro bill to show that she incurred hydro charges of \$468.01 for the period between July 01, 2010 and August 31, 2010. The Tenant stated that this was in excess of the hydro expenses incurred for this period in 2009, although she submitted no evidence to corroborate this statement.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,555.00 on the second day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Based on the undisputed evidence, I find that the Tenant had not paid rent, in the amount of \$2,990.00, when it was due on September 02, 2010 and that the Tenant currently owes rent of \$5,210.00, which includes rent for November of 2010. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$5,210.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. Based on the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the Tenant's door on September 23, 2010. I find that posting the Ten Day Notice to End Tenancy for Unpaid Rent is appropriate notice as required by section 46(1) of the *Act*. As the Tenant did not pay the outstanding rent after receiving the Notice to End Tenancy, I find that the Landlord is entitled to end this tenancy for non-payment of rent.

On this basis I will grant the landlord an Order of Possession. At the hearing the parties were advised that the Order of Possession would be effective two days after it was served upon the Tenant. Upon reflection I have determined that the Order of Possession shall be effective on December 01, 2010. As the Landlord amended the Application for Dispute Resolution to include a monetary claim for unpaid rent from November of 2010 and that the Tenant has been ordered to pay rent for November, I find that she is entitled to remain in the rental unit for this rental period.

In the absence of evidence to the contrary, I accept the female Tenant's testimony that the rental unit was without water for approximately two weeks in December of 2009. In reaching this decision I was heavily influenced by Agent for the Landlord's acknowledgement that there was a problem with the water pump during this time and the absence of evidence from the Landlord, such as repair records or a statement from the person managing the rental unit at that time, that refutes the Tenant's testimony that it took approximately two weeks to restore water to the unit.

I disagree with the Agent for the Landlord's position that the Tenant should have remedied the problem by changing the filter as there is no evidence to show that the Tenant was aware that changing the filter would resolve the problem; that the Tenant knew how to change the filter; or that the Tenant had been directed to change the filter. Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with health, safety, and housing standards required by law and makes it suitable for habitation. In my view this section requires landlords to maintain water systems in a manner that ensures the Tenant will have running water.

It is always difficult to establish appropriate compensation in circumstances where a tenant has been denied a service for an extended period of time. In my view being without running water for approximately two weeks is a significant hardship that significantly reduces the value of the tenancy, particularly when there are three children living in the rental unit. I find the Tenant's claim of \$400.00 to be reasonable and I grant her compensation in that amount for being without running water for approximately two weeks in December of 2009.

After hearing the contradictory evidence regarding the septic system, I find that there was a repeated and ongoing problem with the septic system after it was repaired in 2008. In reaching this conclusion, I was influenced by the Agent for the Landlord's acknowledgment that repairs were made to the system in January of 2009, which was approximately six months after the tank was installed. In reaching this conclusion, I was further influenced by the Agent for the Landlord's acknowledgment that the tank was pumped out in July of 2010, which is approximately two years after the tank was installed. In reaching this conclusion, I was further influenced by the photograph of the leaking septic tank that was submitted in evidence. In my view a septic tank should not leak after two years and this leaking is indicative of a septic system that is not functioning properly. After considering all of these issues I find that the Tenant's testimony that the septic system was not functioning properly for a period of nine months is more credible than the Agent for the Landlord's testimony that the septic system was properly maintained and was functioning properly.

In my view living with a malfunctioning septic system is an inconvenience, although it does not reduce the value of a tenancy as significantly as being without running water. Although the Tenant submitted a photograph of a leaking septic tank she submitted no independent evidence that helps me determine the extent of the disruption caused by the inadequate system. I find that the Tenant is entitled to compensation in the amount of \$450.00 for the inconvenience of the toilet backing up and the odors typically associated to a failing septic system. This equates to monthly compensation of \$50.00, which I find to be reasonable given my personal experience.

I find that the Tenant was without a stove for a period of approximately three months. In reaching this conclusion I accepted the male Tenant's testimony that the problem with the stove was reported to the Landlord at the end of May of 2010 and by the absence of any evidence from the Landlord that refutes that testimony. There is no dispute that the stove was not repaired until the end of August of 2010.

Section 27(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation. Section 27(2) of the *Act* stipulates that a landlord may terminate or restrict a service or facility other than one referred to in section 27(1), if they provide written notice of the termination or restriction and they reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service.

I find that the Landlord had agreed to provide the Tenant with a stove during this tenancy and that the Landlord effectively withdrew this service when the Landlord did not make arrangements to have the stove repaired in a timely manner. I find that it is not sufficient for the Landlord to state that he believed the Tenant would repair the stove. In reaching this conclusion I was influenced by the fact that the Agent for the Landlord did not personally provide the Tenant with authorization to repair the stove after he started managing the rental unit on July 01, 2010; the Tenant stated that he was not given authorization to repair the stove; the Tenant made a request for authorization to repair the stove in an email dated June 24, 2010; and the Landlord was not able to state when, or how, the Tenant would have been given authorization to repair the stove.

In my view being without a stove/oven reduced the value of this tenancy by \$100.00 per month. I therefore find that the Tenant's are entitled to compensation, in the amount of \$300.00, for the period of three months. I base this award not on the Tenant's estimated costs of eating out for three months, but on the inconvenience of having to find alternate cooking sources, such as a barbecue, a hotplate, or purchasing a used stove.

I find that the Tenant was without hot water for a period of approximately one month and only had access to warm water for a period of approximately one month. As the Landlord has acknowledged that the hot water tank stopped functioning on August 10, 2010 and that hot water had been leaking from a pipe under the concrete, I accept the Tenant's evidence that she only had access to warm water for approximately one month in July of 2010. The evidence shows that the Tenant had not access to hot water for approximately one month in August/ September of 2010. Based on the testimony of the Agent for the Landlord and the copy of the repair receipt, I accept that the hot water tank was repaired on September 12, 2010.

In my view only having access to warm water for approximately one month and being without hot water for approximately one month is a significant hardship that significantly reduces the value of the tenancy, particularly when there are three children living in the rental unit, although I find the claim of \$1,375.00 to be excessive. I find that having access to warm water for approximately one month and being without hot water for approximately one month is similar to the inconvenience of being without water for a period of two weeks, and I find that the Tenant is entitled to compensation of \$400.00.

I find that the Tenant submitted insufficient evidence to establish that the hydro expenses for the period between July 01, 2010 and August 31, 2010 were excessive or that her hydro expenses for any period during this tenancy were excessive, and I dismiss her claim for compensation for hydro costs.

I find that the Application for Dispute Resolution filed by each party has merit and that the parties are responsible for the costs of filing their own Application for Dispute Resolution.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective on December 01, 2010. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$5,200.00, in compensation for unpaid rent up to, and including, the month of November of 2010.

I find that the Tenant has established a monetary claim, in the amount of \$1,550.00, which is comprised of \$400.00 in compensation for being without running water for approximately two weeks; \$450.00 for the inconvenience of living with a faulty septic system; \$300.00 for being without a stove for three months; and \$400.00 in compensation for the problems with the hot water tank.

After offsetting these two monetary claims, I find that the Landlord is entitled to a monetary Order of \$3,650.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: November 04, 2010.

Dispute Resolution Officer