



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, DRI, MNR, MNDC, FF

Introduction

This hearing was convened upon joint applications filed by both the tenant and the landlord. The tenant seeks:

1. To dispute an additional rent increase;
2. A monetary Order; and
3. Recovery of the filing fee.

In her application the tenant seeks: \$4,000.00.

The landlord seeks:

1. An Order of Possession for unpaid rent;
2. A monetary Order;
3. An Order to be allowed to retain the security deposit; and
4. An order to recover the filing fee.

In his application the landlord seeks \$2,829.00.

Issues(s) to be Decided

Are the parties entitled to the orders sought?

Background and Evidence

The tenant says on November 1, 2010 there was a sewer flood in her rental unit. The tenant says her rental unit was flooded with feces 3 inches deep. The tenant sways she lost over \$2,000.00 worth of "things". The tenant says the landlord has not come to clean up. The tenant says the landlord says it is her responsibility and the tenant says this cannot be the case because the flood happened because his pipes backed up. The tenant says that she did not pay her rent because of the flood. The tenant seeks \$4,000.00 in damages and for the cost of emergency repairs.

The landlord says this was not a sewer backup as described by the tenant but simply a toilet backup caused by the tenant flushing something down the toilet which was later discovered 9' down the pipe attached to her toilet. The landlord says as the backup was caused by her own actions, he is not responsible to pay for her damaged goods. The landlord says the tenant was required to have insurance for her personal goods and if she does not have it that is her fault. The landlord says he attended as soon as he was notified of the flood and was informed by the tenant that she had already cleaned the rental unit to her satisfaction.

The landlord says the tenant has not paid rent for October, November or December 2010. The landlord testified that he served the tenant personally with a 10 day Notice to End Tenancy on November 8, 2010 at 11:09 a.m. yet he has received no payment of rent.

With respect to the amount of rent, the tenancy agreement signed by the parties and submitted in evidence by the landlord states that the rent is \$1,175.00 per month but is reduced by \$200.00 per month if the rent is paid on time and the tenant abides by other terms of the lease. The landlord claims that as the tenant has not paid her rent on time she has violated the terms of their tenancy agreement and the rent is therefore \$1,175.00 per month, not \$975.00 for a total owing of \$3,525.00. The landlord also claims the unpaid hydro and gas billings of \$142.96, two late rent payment fees of

\$25.00 each and a \$50.00 non-sufficient funds fee for a cheque issued for rent on November 1, 2010 for which there were insufficient funds in the tenant's account.

Analysis

With respect to the tenant's application I find that she has submitted insufficient evidence to prove any of her claims whatsoever. Her claims are therefore dismissed.

With respect to the landlord's claim I find that the landlord is entitled to an Order for Possession. There is outstanding rent. The tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice.

The tenant admits that she withheld her rent and has not paid rent for October, November or December 2010. I therefore grant the landlord a monetary order for those arrears in the sum of \$3,525.00 representing \$1,175.00 rent per month for each of those months. I set the rent at \$1,175.00 in accordance with the Tenancy Agreement signed by the parties in which the parties agreed that the rent was \$1,175.00 but would be reduced by \$200.00 per month if the tenant complied with all of the terms of the Agreement. As the rent has not been paid the tenant has violated the Agreement and the rebate no longer applies. I will allow the landlord's claim for \$50.00 for two late payment fees as agreed to in the Tenancy Agreement. I dismiss the landlord's claim for a non-sufficient funds fee of \$50.00 because the landlord has failed to provide sufficient evidence that such a fee was levied to him by his bank.

The landlord claims \$142.96 for the tenant's share of the Hydro and Gas pursuant to the tenancy agreement and I find he is entitled to that sum.

As the landlord has been successful in his claims I will also award him recovery of the filing fee in the sum of \$50.00.

With respect to the security deposit I note that the Tenancy Agreement states that the tenant paid a security deposit of \$487.50 and a “utility deposit” of \$100.00, which deposit is contrary to the *Residential Tenancy Act*. In any event, as this tenancy is ending I will allow the landlord to keep both deposits in partial satisfaction of the monetary awards made herein and calculated as follows:

Rental arrears	\$3,525.00
Late payment fees x 2	50.00
Hydro/Gas	142.96
Filing Fee	50.00
Less security and utility deposit	-587.50
Total owing to the landlord	\$3,180.46

Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

Dated: December 06, 2010

Dispute Resolution Officer