



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

OPR, MND, MNR, MNSD, MNDC, FF
CNR, OLC, ERP, RP, PSF, LRE, LAT, RR, FF

Introduction

This hearing dealt with cross applications by the landlord and tenant. The landlords application is for an order of possession for unpaid rent, for a monetary order for damage to the unit, a monetary order for unpaid rent, to keep all or part of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee. The tenants application is to cancel a notice to end tenancy for unpaid rent, a monetary order for compensation due to damage or loss, return of the security deposit, for the landlord to comply with the Act, to make emergency repairs, make repairs to the unit, provide services or facilities, suspend or set conditions on the landlord's right to enter, authorize a tenant to change the locks, allow a tenant to reduce rent for repairs and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy began August 2007 with monthly rent of \$1550.00, the tenants paid a security deposit of \$750.00. On March 1, 2011 the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause. On March 31, 2011 the tenant's gave the landlord notice that they would be vacating in 30 days. On April 3, 2011 the landlord served the tenants with a 10 day Notice to End Tenancy for Unpaid Rent.

The landlord at the start of the hearing stated that he had not been served with the tenants hearing documents within 3 days as required, however as both parties were present and aware of one another's claims the hearing proceeded.

The tenant testified that she had never been served by the landlord with the 1 Month Notice to End Tenancy for Cause; the landlord testified that he had served the tenant in person with the notice.

The landlord testified that the tenants have not paid rent for April 2011 and that due to the noise and fighting by the tenants, other tenants vacated their rental unit and the

landlord suffered a loss of rental income on two separate occasions. The landlord stated that the tenants have always paid their rent late and that the tenants have damaged the rental unit.

The landlord in this application is seeking \$4999.00 compensation for unpaid rent, loss and damages.

The tenant testified that that they had paid the April 2011 rent in cash but that the landlord refused to provide them with a receipt for the cash payment. The tenant maintains that neither of the tenants that moved from the 3rd suite moved because of them and that one of the tenants moved because he had purchased a house. The tenant stated that rent has never been late and that the dates on the receipts are not for the 1st of each month as the landlord would often tell the tenants to hang on to the cash rent payments until he could pick the money up from them. The tenant stated that they have not damaged the rental unit and that the landlord's claim is fraudulent as the landlord has not been in their suite to check the condition.

The tenant stated that they have asked the landlord on numerous occasions to get an exterminator for the mouse problem in the rental unit and the raccoon/squirrel problem in the attic. The landlord dismissed the tenant's claim of rodents as false. The landlord stated that he had a pest inspector come to the residence '4 or 5 months ago', that everything was fine and that he had informed the tenants ahead of time about the inspection; the tenant claims this is false. The tenant has submitted photographic evidence of rodent activity in the rental unit.

The tenant stated that when they did the move-in inspection that the landlord told them the marks on the carpet were from drink spills. The tenants had the carpets professionally cleaned at their expense and were advised by the carpet cleaning company that the marks on the carpet were rodent urine.

The tenant stated that the landlord would often flip off a breaker on the electrical panel so that they had no electricity and flip the switch on the furnace so that they had no heat. The tenant stated that on two occasions they contacted the RCMP to come and talk to the landlord to restore the heat and electricity; the landlord claims this is false. The landlord claimed that the breakers would sometimes flip on the electrical panel, shutting off electricity to the rental unit and as he would be at work when this happened he had no control over the situation. The tenant stated that because of the electrical problems in the house, the heat worked less than 50% of the time.

The tenant testified that the toilet leaked, the hot water was white and filmy and that the floor in the bathroom was so rotten that she accidentally put her foot through the floor. The landlord stated that there were no issues with the plumbing or water and as he too lives on the property he would have noticed and corrected the matter. The landlord stated that it was the tenant's fault that the floor in the bathroom is rotten.

The tenant stated that the laundry facilities are in their rental unit but that the landlord comes in to use the washer and dryer whenever he wants to and without notice. The tenant stated that it has been very upsetting for her and her children as the landlord will come into their unit to use the laundry facilities with only his boxer shorts on. The landlord stated that he had made a verbal agreement with the tenants to use the laundry two times per week; the tenant claims this is false as there was no agreement in writing.

The tenant stated that the back yard is full of sink holes and that the landlord has done nothing to fix the problem. The tenant did state that all of the tenant's requests for repairs have been verbal with the exception of the March 30, 2011 letter to the landlord which outlines all of the problems with the rental unit.

The tenant in this application is seeking \$4800.00 compensation for loss of peace and quiet enjoyment.

Analysis

The parties in this hearing both refuted the testimony of the other, claiming that all evidence being given by the other party was false.

In regards to the landlord's application I find based on the evidence provided that the landlord has not met the burden of proving that the tenants did not pay the April 2011 rent, therefore the landlord's application for an order of possession for unpaid rent and a monetary order for unpaid rent are hereby dismissed. The landlord has not met the burden of proving that the tenants were the reason why other tenants residing on the property moved out or that he did incur a financial loss, therefore the landlord's application for 2 months rent compensation is dismissed without leave to reapply.

The tenants as of this date have not yet vacated the rental unit and the landlord has not completed an inspection of the rental unit, therefore the landlord's claim for damages is premature and this portion of the landlord's application is dismissed.

As the landlord has not met the burden of proving that the tenants were served with the 1 Month Notice to End Tenancy for Cause, matters related to this notice are hereby dismissed without leave to reapply.

In regards to the tenant's application I find based on the evidence provided that the tenants have met the burden of proving that the rental unit requires repairs, that there is a rodent infestation, that the landlord withheld services, entered the tenants unit without giving proper notice resulting in the tenant's peace and quiet enjoyment being affected. However as the tenants did not put these matters in writing to the landlord until March 31, 2011, the tenants are entitled to a limited amount of compensation only.

The landlord did not maintain the rental property as required by the *Act* and have the electrical system repaired to prevent electrical and heat disruptions to the tenants. The photographic evidence submitted by the tenant's shows rodent activity in the rental unit and the landlord admitted that he has repeatedly entered into the tenant's rental unit to use the laundry facilities without giving proper notice.

Accordingly, I find that the tenants have established entitlement to compensation in the limited amount of \$500.00

As the tenancy ends in one day's time, it is premature for the tenants to request return of the security deposit, not necessary for the tenants to change the locks, not necessary for the tenants to reduce rent for repairs, have conditions set on the landlord's right to enter, for the landlord to make repairs or emergency repairs and these portions of the tenant's application are dismissed without leave to reapply.

As the landlord's 10 Day Notice to End Tenancy for Unpaid Rent has been set aside, the tenant does not require the notice to be cancelled and this portion of the tenant's application is dismissed without leave to reapply.

Neither party is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenant has established a monetary claim for **\$500**.

A monetary order in the amount of **\$500.00** has been issued to the tenant and a copy of it must be served on the landlord. If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: April 29, 2010

Residential Tenancy Branch