



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MND, MNDC, FF

Introduction

This hearing dealt with an application by the landlords for a monetary order as compensation for unpaid rent / compensation for damage to the unit / compensation for damage or loss under the Act, regulation or tenancy agreement / and recovery of the filing fee. Both parties participated or were represented in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlords are entitled to any or all of the above under the Act

Background and Evidence

There is no written tenancy agreement in evidence for the tenancy which began several days before April 1, 2009. Monthly rent was \$650.00. A security deposit was not collected, and a move-in condition inspection report was not completed.

A fire occurred in the unit on April 27, 2009, however, the landlord testified that the tenant continued to reside in the unit until sometime into late July 2009. The landlord also testified that as the rental unit is located within only feet of his own residence, he was in a position to clearly determine that the tenant still lived in the unit. However, the tenant's agent testified that following the fire, the tenant did not return to live in the unit and, instead, because of physical and emotional trauma resulting from the fire she went to live with her mother.

The landlord claims that the tenant acted without proper care in her attempts to light the stove and that, as a result, she was responsible for the fire and all the related damage to the unit. Included in the landlord's evidence is a copy of a "fire report" from the Office of the Fire Commissioner, which describes the tenant's actions leading up to the fire.

The tenant's agent argues that the landlord improperly instructed the tenant as to the manner in which the stove ought to be lit, and was essentially unresponsive to her reports that "on numerous occasions" the "residence filled with smoke." Included in the tenant's evidence is a sworn affidavit by the owner and operator of a business for the

repair and installation of pellet stoves, in which he speaks in part to “The Ignition of the Stove.”

Arising from rent which remained overdue on August 1, 2009, the landlord’s agent issued a 10 day notice to end tenancy for unpaid rent dated August 4, 2009. A copy of the notice was submitted into evidence, and the tenant’s agent does not dispute that the tenant received the notice. The notice documents unpaid rent in the total amount of \$1,950.00, and the landlord testified that this reflects the combined total of \$650.00 for each of the 3 months of May, June and July 2010. The landlord testified that, subsequently, the tenant made no further payment toward rent.

On or about August 25, 2009, a mover acting on the tenant’s behalf attended the unit in order to remove her possessions. It is understood that the landlord prohibited entry to the unit until such time as all allegedly overdue rent was paid. Thereafter, the landlord changed the locks on the unit, and on or about September 1, 2009 the tenant undertook a forced entry in order to recover her possessions. The landlord testified that the forced entry resulted in a broken window which he repaired / replaced.

There is no dispute that a move-out condition inspection report was not completed, and in relation to the fire, the tenant has served the landlord with a notice of civil claim.

In summary, the landlord seeks compensation in the total amount of \$4,542.01 as follows:

\$1,950.00: unpaid rent for May, June & July (3 x \$650.00)

\$2,244.79: miscellaneous supplies, clean up, repairs & labour

\$297.22: repair / replace broken window

\$50.00: filing fee

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and the affirmed testimony of the parties present, and in the absence of any direct testimony by the tenant, I find on a balance of probabilities that the parties orally entered into a month-to-month tenancy agreement. I also find that the tenant resided in the unit until sometime into late July 2009, although she appears to have maintained possession of the unit after that time while some of her personal belongings remained within.

I further find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated August 4, 2009. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. Accordingly, I find that the landlord has established entitlement to compensation for unpaid rent in the amount of **\$1,950.00***, as claimed (\$650.00 for each of May, June & July 2009).

Once again, based on the documentary evidence and the affirmed testimony of the parties present, and in the absence of any direct testimony by the tenant, I find on a balance of probabilities that the tenant damaged the kitchen window in the unit at the time when she undertook a forced entry on or about September 1, 2009. While the tenant had the option of applying for dispute resolution, seeking an order instructing the landlord to return her personal property, there is no evidence that she did so. Accordingly, I find that the landlord has established entitlement to compensation for replacement / repair of the window in the full amount claimed of **\$297.22***.

On the basis of the documentary evidence, the testimony of the parties present, and in the absence of any direct testimony by the tenant, as well as the absence of comparative move-in and move-out condition inspection reports, I find on a balance of probabilities that the landlord has established entitlement limited to **\$561.20,*** which is 25% of the total amount claimed for supplies, cleanup, repairs & labour resulting from the fire (25% x \$2,244.79).

As the landlord has generally achieved success with the application, I find that the landlord has established entitlement to recovery of the **\$50.00*** filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,858.42** (\$1,950.00 + \$297.22 + \$561.20 + \$50.00). Should it be necessary, this order may be served on the tenant, filed in the 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*.

DATE: April 6, 2011

Residential Tenancy Branch