

DECISION

Dispute Codes:

Landlord's application: *OPR, MND, MNR, MNSD, MNDC, FF*

Tenant's application: *CNR, MNDC, OLC, MT, PSF, LRE, RR, FF*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent, for damage to the unit, for noise violation fines levied by the strata and for the filing fee. The landlord also applied for an order to retain the security deposit in partial satisfaction of his claim.

The tenant applied for an order to cancel the notice to end tenancy and for more time to do so. The tenant also applied for a monetary order for compensation for loss of the use of facilities, for the filing fee, for a rent reduction due to lack of heating in the bedroom and for an order to suspend the landlord's right to enter the rental unit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. During the hearing, the landlord stated that he would like to withdraw his application for damage to the unit and to retain the security deposit with leave to reapply at a later date. Since the tenant is still in possession of the unit, I agreed to dismiss this portion of the landlord's application with leave to reapply.

Issues to be decided

Is the landlord entitled to an order of possession and a monetary order for unpaid rent, noise violation fines, utilities and the filing fee? Did the tenant have exceptional circumstances that prevented him from filing his application to dispute the notice to end tenancy in time? Is the tenant liable for the cost of extra utilities and the fines for noise violations? Is the tenant entitled to a reduced rent?

Background and Evidence

This tenancy started on September 01, 2010, for a fixed term of one year. Rent is \$1,490.00 due on the first day of each month. The rental unit is a one bedroom apartment located in a 32 storey building that houses 300 rental units. The unit was partially furnished by the landlord and among other items, contained a queen size bed and a dining table.

The landlord lives out of Province and received notices of noise violations by the tenant. The strata cited several instances of these violations and in a letter dated November 22, 2010; the landlord was fined \$200.00. The landlord informed the tenant who did not pay the fine. On January 11, 2011, the strata issued a second letter citing various noise disturbances along with the imposition of another fine of \$200.00. Again, the landlord informed the tenant who refused to pay the fine. The landlord filed these letters into evidence. The landlord paid the fines and is claiming to be reimbursed by the tenant.

The landlord visited the unit and noticed that the queen bed and dining table were missing and were replaced by four single beds. The tenant was not present. The occupant of the unit told the landlord that the tenant did not live in the unit and that four sub tenants did. Each sub tenant paid a monthly rent of \$600.00 to the tenant. The tenant agreed that he did not live in the unit and that he had sub let it – but stated that he had sub let to only two persons.

The landlord filed evidence to demonstrate the sharp increase in utilities since this tenancy started. He stated that the utilities were usually \$50.00 per month when the unit was occupied by two people. Since the tenant took over the unit, the bills were as high as \$180.00. The landlord is claiming \$400.00 toward the extra utilities paid over the term of the tenancy.

The landlord stated that except for one month, the tenant always paid rent late. The tenant agreed that he owed the landlord \$490.00 for February, \$490.00 for March and \$1,490.00 for April.

On March 05, 2011, the landlord served the tenant with a notice to end tenancy by posting it on the front door. The tenant agreed to having received this notice. The tenant stated that his girlfriend had surgery on March 06, 2011 and therefore he was unable to file an application to dispute the notice in a timely manner. The tenant applied on March 18, 2011 which is well outside of the time line of five days to make application, even taking into account that he is deemed to have received it on March 09, 2011.

The tenant stated that he did not have heat in the bedroom and informed the landlord. The tenant stated that the facilities of the pool, sauna and gym were not available for use, for several months. The tenant is claiming compensation in the amount of \$5,000.00, for loss of use of these facilities and for lack of heat in the bedroom. The landlord stated that he was not informed by the strata or the tenant that the pool, sauna and gym were not available for use by the residents. The tenant did not file any evidence to support his application.

Analysis

Based on the sworn testimony of the both parties, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on March 05, 2011 and did not pay rent within five days of receiving the notice to end tenancy nor did he apply to dispute the notice. The tenant has not proven that he had extraordinary circumstances that prevented him from applying to dispute the notice, within the legislated time frame of five days and therefore his application for more time to dispute the notice is dismissed.

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. Pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established a claim of \$2,470.00.00 for unpaid rent, \$400.00 for strata fines, \$400.00 for increased utilities and \$50.00 for the filing fee. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the total amount of \$3,320.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant did not file any evidence to support his monetary claim. Since the tenancy is ending, the tenant's claim for services and a reduced rent is moot. Accordingly the tenant's application is dismissed in its entirety and the tenant must bear the cost of filing his application.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$3,320.00**. The tenant's application is dismissed in its entirety.

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 08, 2011.

Residential Tenancy Branch