



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNDC, FF/MT, CNR, MNDC

Introduction

This hearing was convened in response to applications by the Tenant and Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applies for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent / loss of revenue - Section 67;
3. An Order to retain the security / pet deposit - Section 38;
4. An Order to recover the filing fee for this application - Section 72.

The Tenant applies for Orders as follows:

1. An Order allowing more time to make an application to cancel and Notice to End Tenancy – Section 66;
2. An Order cancelling a Notice to End Tenancy – Section 46;
3. A Monetary Order for compensation for loss – Section 67.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing through personal service in accordance with Section 89 of the Act. The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to more time to dispute the Notice?

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy of a 3 bedroom unit began on October 1, 2009. Rent in the amount of \$1,600.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$800.00. The Tenant failed to pay rent for the month of March 2011 and on March 22, 2011, the Landlord personally served the Tenant with a notice to end tenancy for non-payment of rent.

Information on the file indicates that the Tenant filed an Application for Dispute Resolution 6 days after receiving the Notice. The Tenant states that she did not file the application within 5 days after receiving the Notice as at the time she was under significant stress and was experiencing medical issues due to the bedbug infestation in the unit. The Tenant states that she did not pay rent because she did not have the money.

The Tenant states that although her tenancy began in October 2009, she did not live in the unit until June 2010. Prior to that time, her goddaughter was living in the unit and sleeping in one of three bedrooms. When the Tenant moved in, she took over that bedroom and the goddaughter moved into the second bedroom. The Tenant states that within weeks of the move, bedbugs were discovered in the second bedroom. Within another two months, bedbugs were also discovered in the third bedroom. The Landlords were informed of the bedbugs when they were first discovered in June 2010. The Landlord states that the bugs were the fault of the Tenant and did nothing to fix the

problem. The Landlord hired a specialist to treat the bedrooms for the infestation on March 22 and 29, 2011.

The Tenant states that she could not afford the cost of the treatment but did use other methods, such as alcohol in an attempt to rid the bugs. The Tenant stopped using the two bedrooms altogether and created a second bedroom in the lower part of the unit. The Tenant states that she still has scars from the bug bites, and has suffered significant stress and medical issues due to the infestation. The Tenant moved out of the unit on April 4, 2011 but did not return the keys to the Landlord. Some of the Tenant's belongings are still at the unit but the Tenant states that she intends to have those removed and keys returned by April 21, 2011.

The Landlord requests an Order of Possession for April 21, 2011 and claims unpaid rent for the month of March in the amount of \$1,600.00 and a per diem amount for April to the date of possession. The Landlord also claims reimbursement for the cost of the bug treatments.

The Tenant claims an amount equivalent to 2/3 of the rent from June 2010 until the end of the tenancy as compensation for not being able to use 2 bedrooms for that period of time due to the bedbug infestation.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. The Tenant filed a notice for dispute resolution one day late and given her reasons for the late filing, she was granted an extension to dispute the Notice. I find however that her reason for not paying the rent due to insufficient funds, does not provide relief to the Tenant from her obligation to pay rent as it is due. Accordingly, I find that the Notice to End the Tenancy is valid and Landlord is entitled to an **Order of Possession with an effective date of April 21, 2011**. I also find that the Landlord has established a monetary claim for unpaid rent for

March 2011 in the amount of \$1,600.00 and a monetary claim for a per diem amount of rent for April 2011 to the date of the Landlord's possession on April 21 in the amount of \$1,120.00 ($1,600/30 \times 21 = 1,120.00$) for a total amount of **\$2,720.00** ($1,600.00 + 1,120.00 = 2,720.00$). The Landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$2,770.00**.

Section 32 of the Act requires a landlord to maintain residential property in a state of repair that complies with the health, safety and housing standards required by law and to make it suitable for occupation by a tenant. Regardless of how the infestation came about, bedbug infestations are a serious matter and I find that the Landlord is responsible for ensuring treatment occurs in a timely manner upon notice by the Tenant that the problem exists. I accept the Tenant's evidence that the Landlord knew about the problem by the end of June 2010 when the infestation was only in one bedroom. Given the finding of Landlord responsibility for the cost of the treatment, I dismiss the Landlord's claim for compensation for the cost of the treatment. Given the Landlord's failure to carry out treatment on the infestation until March 2011, I find that the Tenant is eligible to be compensated for the loss of a portion of the unit for the nine month period from July 1, 2010 to April 1, 2011. Considering the Tenant's ability to create an alternate bedroom in the unit, I find that a resulting loss of bedroom space would be equivalent to a deduction of 1/3 of the total rent in the amount of \$4,800.00 ($1,600.00 \times 1/3 \times 9$). The Tenant is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$4,850.00**.

As the Tenant has established a claim amount greater than the Landlord, **I grant** the Tenant the difference in the two entitlements in the amount of **\$2,080.00** ($4,850.00 - 2,770.00 = 2,080.00$).

Conclusion

I grant an Order of Possession with an effective date of April 21, 2011 to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to

comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$2,080.00**. If necessary, this order may be 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*.

Dated: April 19, 2011.

Residential Tenancy Branch