



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, MNR, MNDC, RR, FF, O

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy for cause; for a monetary order for the cost of emergency repairs; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the tenant be allowed to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

The parties both attended, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. The landlord also called 2 witnesses who gave affirmed testimony and were subject to cross examination by the tenant. All testimony and evidence provided by the parties prior to the hearing has been reviewed and is considered in this Decision.

Toward the conclusion of the hearing, the parties agreed that the tenancy will end on April 30, 2011, and therefore the evidence lead by the parties with respect to the notice to end tenancy is not included in this Decision. Further, I grant an Order of Possession in favour of the landlord effective April 30, 2011 at 1:00 p.m. This Decision deals with the remaining applications filed by the tenant.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the cost of emergency repairs?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This fixed-term tenancy began on September 15, 2010 and expires on September 15, 2011. Rent in the amount of \$550.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$275.00.

The tenant testified that the advertisement in the newspaper that advertised the rental unit for rent specified that cable and electricity were included in the rent. The tenant provided a copy of that advertisement in advance of the hearing. She further testified that she did not notice that the landlord did not include cable on the tenancy agreement until sometime after the tenancy began. She stated that the unit had cable for about the first 2 weeks of the tenancy but the cable company put a block on it. She contacted the landlord, who advised her to call the cable company. The cable company told her that the landlord had been billed for regular cable for 3 suites but wasn't paying for the extended channels he had been receiving. She stated the landlord got into trouble by the cable company and then told her that she was not going to get cable.

The tenant broke a shelf in a closet, which cost her in excess of \$80.00 to repair. She stated that it was plastic and not sturdy, but is now sturdy since the repair. The tenant asks for an order that the landlord reimburse her for that expense.

The tenant further testified that heat is included in the rent and the landlord controls the thermostat for her unit. The unit is not warm enough and she is sometimes required to heat using the oven. The tenant uses the oven to dry her steel toed boots, and to get the chill out of the air when she gets up in the morning. She told the landlord, and the landlord stated that the heat was on. She complained again, and the landlord's wife confirmed that the heat was turned off and turned it back on again. The next morning there was again no heat and she stated she could see her breath in the rental unit. She turned the oven on to get the chill out.

The landlord testified that the advertisement for renting the unit stated that cable was included because he saw a cable, but he did not mean that the tenant could use it. He stated that the tenancy agreement does not include cable.

The landlord further testified that the tenant told him that she doesn't like heat, she gets headaches, and he was respecting her wishes by keeping the heat off.

The landlord further testified that the tenant broke the shelf, and he expects her to pay for the damage, which she has done. The landlord disagrees that he should be required to reimburse the tenant for the damage.

Analysis

Firstly, dealing with the tenant's application for compensation for the cost of an emergency repair, the *Residential Tenancy Act* describes emergency repairs as urgent, necessary for the health or safety of anyone or for the preservation or use of residential property. Therefore, if the tenant had repairs completed that were to protect life or property, the tenant would be entitled to reimbursement of the cost of those repairs. The *Act* also states that during a tenancy, a tenant is required to repair damage made to the rental unit which was caused by the tenant. Therefore, the tenant would have been required to repair the shelf in any event, and the tenant is not entitled to recovery of that cost.

With respect to the tenant's application allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, I find that the landlord's explanation for not providing cable is not sufficient. The landlord advertised the unit for rent with cable included, and provided that cable for the commencement of the tenancy, and then had it removed. The *Act* does not permit the landlord to restrict a service agreed upon.

I further find that the landlord's explanation for providing no heat to the rental unit is not sufficient. The landlord had an obligation to ensure heat was in the rental unit. It is not acceptable that a tenant would be required to take the chill out of the air in the morning by turning on the oven.

In determining the amount by which the tenant would be justifiably compensated for the landlord's breach of the tenancy agreement as described above, I would have to be provided with the amount of a monthly cable bill, which has not been provided by either party. Nor have I been provided with an amount by which the tenant feels she should be compensated for lack of heat in the rental unit. The tenant's application requests a monetary order in the amount of \$85.00, and I find that amount to be just in the circumstances. The tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$135.00. This

order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

I further grant an Order of Possession in favour of the landlord effective April 30, 2011 at 1:00 p.m. If the landlord serves the Order of Possession on the tenant and the tenant fails 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.

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 21, 2011.

Residential Tenancy Branch