



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord – OPR, MNR

Tenant – MT, DRI, CNC, CNR, MNR, MNDC, ERP, LAT, RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought more time to apply to cancel a notice to end tenancy; dispute an additional rent increase; cancel two notices to end tenancy; a monetary order; an order to have the landlord make repairs; an order to allow the tenant to change locks; and an order to reduce the rent.

The hearing was conducted via teleconference and was attended by the landlord, the tenant and her advocate.

At the outset of the hearing the tenant indicated that she would be moving out of the rental unit by July 15, 2011, the landlord agree this was acceptable. I accept the parties settled the occupancy portion of their respective applications by this agreement.

As a result of this settlement, there is no longer a need for the landlord to seek an order of possession based on unpaid rent and I amend the landlord's application to exclude this matter. Similarly, the tenant no longer requires to contest both a 1 Month Notice to End Tenancy for Cause or the 10 Day Notice to End Tenancy for Unpaid Rent and I amend the tenant's application to exclude these two matters.

As the tenant is vacating the rental unit, I inquired if there was still a need to pursue the issues of an additional rent increase; an order to have the landlord make emergency repairs; to authorize the tenant to change the locks; or to allow the tenant to reduce future rent. The tenant agreed those matters were no longer necessary and I have amended the tenant's application to exclude these matters.

I have considered all relevant testimony and evidence provided by both parties.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent, pursuant to Section 26, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for the cost of emergency repairs and money owed or compensation for damage or loss under the *Act*, pursuant to Sections 33, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

While the tenant has resided in the rental unit the current tenancy agreement was signed by the parties on October 3, 2010 for a fixed term tenancy set to end on June 30, 2011, for a monthly rent of \$1,000.00 due on the 30th of each month. The parties agreed that a security deposit of \$500.00 was paid in June 2008 and an additional deposit was paid in October 2010 of \$166.66.

The tenancy agreement stipulates that the tenancy will end on the fixed term and the tenant must vacate the rental unit.

The parties also agree that the tenant did not pay rent when it was due for June 2011. The landlord asserts the tenant said she would mail a cheque to the landlord, after it was not just deposited into her bank. The landlord testified that she never received the cheque and when she called the tenant about it the tenant stated she forgot to put a stamp on the envelope. The landlord never received a cheque. The landlord seeks rent for the month of June and for July up to the day the tenant vacates the rental unit.

The tenant testified that she had been trying, for several months, to get the landlord to pay her for replacement of locks that she had been forced to do because the landlord failed to do so. In addition, she felt the landlord owed her additional monies for compensation for accepting the landlord's mail for the duration of the tenant's occupancy of the rental unit; for hydro costs for the same period because the landlord had failed to repair a door which caused the tenants hydro costs to be very high; for having to have her tub cleaned monthly by professional mould removal cleaners. As such the tenant withheld the rent.

While the tenant's financial claim on her application was \$3,412.46 she provided a breakdown of her claim as follows:

Description	Amount
Percentage of Hydro Bill for 3 years	\$690.30
Mail box rental for 3 years	\$405.00
Additional Security Deposit	\$166.66
Bath tub cleaning 1per month (5 months)	\$100.00
Lock replacement (purchase and installation)	\$50.00
Pain and suffering	\$2,000.00
Total	\$1412.46

The tenant requests compensation for the filing of a previous Dispute Resolution application where the tenant asserts that she was acting as the landlord's agent in a dispute with a former roommate. The resulting decision from that application was dismissed on the grounds that the tenant was representing her own interests in relation to a dispute with her roommate and it was not a landlord/tenant issue.

The tenant asserts that she had reported a problem with the door and the locks to the rental unit to the landlord who had her partner fixed it but that when he fixed it there were huge gaps and daylight could be seen around the door allowing for heat to escape and bugs to enter the house. As result, the tenant seeks compensation for additional heating charges throughout the duration of the tenancy.

The landlord testified that despite the initial problem identified with the door the tenant never once reported any additional problems, except for exchanging the locks on the door which the landlord completed. The tenant testified that a future date the locks stopped working altogether and the landlord failed to replace them so she had them replaced herself. The landlord also testified she was never made aware of any additional problems with the locks.

The tenant seeks compensation for the rental of a mailbox because she collected any mail for the landlord and her family while the landlord was travelling over the course of the tenancy. The landlord testified that the tenant agreed to this and never reported to the landlord that this was a problem.

The tenant states that she was intimidated by the landlord when she signed the first tenancy agreement and the subsequent ones that if she did not agree to this condition the landlord would not continue the tenancy. The landlord testified she was unaware that there was an issue for the tenant in relation to the mail box.

The tenant seeks return of a portion of the security deposit, as the rent for the unit is listed in the tenancy agreement as \$1,000.00 and the landlord currently has \$666.66 held in trust as the security deposit. The landlord testified that she had this amount at the tenant's insistence when the tenant's roommate moved in.

The tenant asserts there is "black mould" in the bathroom and that despite the landlord's partner making repairs to the bath tub the repairs never took and the bath tub continues to have "black mould" that required the tenant to hire someone once per month to clean the tub with cleaners that the tenant cannot use due to her own allergies. The landlord testified there were unaware of any mould problems.

The tenant testified she has suffered severe stress as a result of this tenancy and should be entitled to compensation for this.

Analysis

Section 26 of the *Act* stipulates that a tenant must pay rent when it is due whether or not the landlord is compliant with the *Act*, with limited exceptions. A relevant exception in this case is that of emergency repairs under Section 33.

Section 33 defines emergency repairs as: urgent; necessary for the health or safety of anyone or for the preservation or use of the residential property; and are made to repair major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating systems; damage or defective locks that give access to a rental unit; or electrical systems.

The only applicable repair to be considered in this case is the replacement of locks for access doors. Section 33 requires the tenant to contact the landlord or their agent for emergencies at least twice to request the repair and if the landlord does not make the repair in a reasonable time the tenant may make the repairs.

I accept that the landlord's testimony that the tenant had been advised to contact the neighbour if she needed anything done in the house and that the neighbour had signed blank cheques from the landlord to be used in the event of an emergency. From both parties this is exactly what occurred when the water heater required replacement, as such, I do not accept the tenant was unaware of this process she had already used once.

As such, the tenant should have contacted the neighbour in relation to the door locks and if the neighbour failed to deal with it then she could make the repairs herself. If she had done this she must then provide the landlord with a request for reimbursement and itemized receipts as required under Section 33. As the tenant failed to do this in relation to the door locks, I dismiss this portion of her claim.

As none of the other compensation the tenant is seeking is for emergency repairs there is no other exemption under the *Act* that would allow the tenant to withhold rent for the month of June 2011, as such I find the landlord is entitled to the full claim for rent for the month of June, 2011.

In relation to the landlord's claim for rent until the tenant vacates the rental unit, I find that as a result of the term in the fixed term tenancy that requires the tenant to vacate the rental unit at the end of the fixed term, the tenant is overholding and is therefore responsible for a per diem rent amount based on the value of the tenancy in the tenancy agreement. Therefore, I find the tenant responsible for 15 days at a per diem rate of \$32.25 per day for a total of \$483.75.

To be successful in making a claim for loss or damages the party making the claim must provide sufficient evidence to establish the following four points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. The steps taken to mitigate any loss.

As to the tenant's claim for compensation for the filing fee of a previous dispute, as that hearing resulted in a decision that implies the tenant was not representing the landlord, I find the landlord cannot be held responsible for the that filing fee and I dismiss this portion of the tenant's application.

In relation to the tenants claim for a percentage of hydro, based on the photographic evidence I accept there was damage to the door that allowed heat to escape the rental unit. As the tenant has failed to provide any evidence that she informed the landlord of any problems that would cause such gaps, I accept that the landlord was uninformed of the problem and therefore had no opportunity to address the issue.

As a result, I find the landlord did not violate the *Act*, regulation or tenancy agreement in regard to the damage to the door and therefore the subsequent loss of heat. I dismiss this portion of the tenant's application.

The claim for reimbursement of the mailbox rental fees relates to a verbal agreement between the parties and one that went on over a 3 year period with no complaint from the tenant. As to the tenant's claim that she was intimidated by the landlord to accept this term and in general, I find the testimony to be unreliable for a number of reasons:

1. The tenant complained about the hot water tank and it was repaired without incident;
2. The tenancy ended on two previous occasions and the tenant could have vacated the rental unit without re-entering a tenancy agreement;
3. In her own evidence the tenant refers to opportunities she had to move into cheaper and alternate accommodation.

I therefore dismiss the tenant's claim to reimbursement for these charges.

I accept the landlord holds a security deposit in excess of the amount allowed under Section 19 of the *Act* that stipulates a landlord may not accept a security deposit in excess of the equivalent of ½ month's rent. As such, I order the tenant is entitled to the return of \$166.66 of security deposit at this time.

As to the tenant's claim for cleaning mould charges, I find the tenant has failed to provide any evidence with regard to a serious mould problem. Even the photographic evidence provided shows only a small area of black substance in the corner of the tub. There is no evidence before that confirms that it is mould of any kind or that it has any health ramifications. In addition, again the tenant has provided no evidence that she informed the landlord of this problem. I dismiss this portion of the tenant's claim.

And finally to the tenant's claim for \$2,000.00 for pain and suffering, the tenant has provided no evidence of pain and suffering resulting from the tenancy or her interactions with the landlords or their agents during the tenancy.

In fact, I find the landlord was responsive to requests or complaints from the tenant; had provided an agent while they were travelling who could act quickly in the case of emergencies; and altered tenancy agreements to suit the tenants needs.

I make these findings partly because even though there is a tenancy agreement that says the rent is \$1,000.00 per month it appears the landlord reduced the rent when the tenant's roommate moved out to \$826.00 per month, when she was not required to do so. For these reasons, I dismiss the tenant's claim for pain and suffering.

Conclusion

In support of the agreed upon move out date I grant the landlord an order of possession effective **July 15, 2011 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,143.09** comprised of \$826.00 rent owed; \$483.75 overholding; less \$166.66 return of the overpayment of security deposit.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: July 08, 2011.

Residential Tenancy Branch