



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNR, MNDC, OLC, ERP, RP, RR, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy, for a monetary Order for money owed or compensation for damage or loss, for the return of her security deposit, for authority to reduce the rent, for an Order requiring the Landlord to repair the rental unit; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession or whether the Notice to End Tenancy for Unpaid Rent should be set aside; whether either party is owed money; whether there is a need for an Order requiring the Landlord to repair the rental unit; whether the security deposit should be retained by the Landlord or returned to the Tenant; and whether either party is entitled to recover the fee for filing their Application for Dispute Resolution, pursuant to sections 38, 47(4), 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that they entered into a tenancy agreement that required the Tenant to pay rent of \$1,050.00 and that she paid a security deposit of \$525.00. The Landlord stated that the rent is due on the first day of the month and the

Tenant stated that the rent is not due on any particular date, although the Landlord generally picks up the rent during the first week of the month.

The Landlord and the Tenant agree that the Tenant did not pay any rent for July until July 07, 2011, at which time she paid \$360.00. The parties agree that the Tenant paid the remaining \$690.00 in rent on July 21, 2011 or July 22, 2011, at which time she was given a receipt that indicated the rent was being accepted for use and occupancy only.

The Landlord and the Tenant agree that the Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of July 17, 2011, on July 07, 2011.

The Tenant contends that she did not pay the remainder of her rent after receiving the Notice to End Tenancy, in part, because she was waiting for the patio roof to be repaired. She stated that she could not pay the outstanding rent within five days of receiving the Notice to End Tenancy as she did not know how to get hold of the Landlord, given that the Landlord normally picked up the rent from the Tenant.

The Landlord and the Tenant agree that this rental unit is equipped with a private patio that is open to the elements on the sides but is covered with a corrugated plastic roof. The Landlord stated that he is aware that the roof dripped occasionally and that the Tenant was informed that the roof dripped occasionally at the start of the tenancy. The Tenant stated that she first noticed the leak in September of 2010. The Tenant submitted photographs of the patio area, which clearly demonstrate this area is open to the elements.

The Tenant stated that she left personal property on this patio, even after she became aware of the leak, as she had nowhere else to store the property. She is seeking compensation, in the amount of \$600.00, for damage to a "bouncy castle", a tent, two bicycles, and a scooter.

The Tenant contends that she was told at the start of the tenancy that she could store personal property in the common laundry room but that she was never given space in the common area. The Landlord contends that the Tenant was never told that she could store personal property in the common laundry room and that storage facilities were not provided with the rental unit. The Landlord contends that the Tenant was advised that the roof would not be repaired, although he did offer to remove the roof and simply leave the area uncovered. The Tenant denies being told that the Landlord was willing to remove the roof.

The Landlord and the Tenant agree that there has been an on-going conflict between the Tenant and other occupants in the residential complex regarding smoking in the rental unit. The parties mutually agreed to resolve this dispute under the following terms:

- The Tenant agrees that she will not smoke inside her rental unit for the remainder of the tenancy
- The Landlord agrees that the occupant living below the Tenant will be advised that she cannot smoke inside her rental unit for the remainder of the Tenant's tenancy

Analysis

On the basis of the undisputed evidence presented at the hearing I find that the Tenant was required to pay monthly rent of \$1,050.00.

I find that the Landlord submitted insufficient evidence to show that the Tenant was required to pay her rent by the first day of each month. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's statement that it was due on the first day of the month or that refutes the Tenant's statement that it was generally paid during the first week. On the basis of the fact that the Tenant acknowledges her rent was generally paid during the first week of the month I find that the rent was due prior to the seventh day of each month.

Section 46 of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the date it is due, by giving notice to end the tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice. On the basis of the undisputed evidence presented at the hearing I find that the Tenant did not pay all of the rent that was due by the seventh day of July and that the Landlord personally served her with a Ten Day Notice to End Tenancy on July 07, 2011. I therefore grant the Landlord's application for an Order of Possession and I dismiss the Tenant's application to set aside the Notice to End Tenancy.

Section 46(4)(a) of the *Act* stipulates that the Notice to End Tenancy is of no effect if the Tenant pays the rent within five days of receiving the Notice. This section does not apply in these circumstances, as the Tenant did not pay the outstanding rent. In determining this matter I rejected the Tenant's argument that she could not pay the rent as she did not know where to pay the rent. Given that the Landlord's address is clearly indicated on the Notice to End Tenancy, I find that the Tenant had an obligation to deliver the rent to that address, even if the Landlord normally picks up the rent from the Tenant.

Section 26(1) of the *Act* stipulates that a tenant must pay rent when it is due whether or not the landlord complies with the *Act*. I therefore find that the Tenant was obligated to pay rent for July even if she believed the Landlord was contravening the *Act* by not repairing a leaking porch roof.

There is a general legal principle that places the burden of proving that damage or loss occurred on the person who is claiming compensation. In regards to the Tenant's claim

for compensation for damages to her personal property, the burden of proof rests with the Tenant.

I find that this rental unit was equipped with a porch that is clearly open to the elements on the sides and is covered by a corrugated plastic roof. I find that the Tenant submitted insufficient evidence to establish that the Landlord represented this area as a secure, dry area to store personal property. In reaching this conclusion I was heavily influenced by the absence of any evidence that corroborates the Tenant's statement that the Landlord never told her that the roof leaked occasionally or that refutes the Landlord's statement that she was told the roof leaked occasionally. More importantly, I was heavily influenced by the photographs of the porch, which is clearly open to the elements even if water cannot drip directly through the roof. In my view this is not an area where there can be a reasonable expectation that items stored in this area would remain dry, particularly in the lower mainland where there is significant moisture in the air. As the Tenant elected to store her personal property in an area that is clearly not dry, I dismiss the Tenant's claim for compensation for damage to her property.

In dismissing the Tenant's claim for compensation for damage to her property I was influenced, in part, by the absence of evidence that demonstrates the damage to her tent, "bouncy castle", or two bicycles. Without photographs that demonstrate these items sustained damage that exceeded what could reasonably be expected when items are stored in an outside location, I cannot conclude that the Landlord is responsible for the damage.

In dismissing the Tenant's claim for compensation for damage to her property I was influenced, in part, by the photographs of the scooter she alleges was damaged. These photographs show a scooter that is in reasonable condition for a scooter that was stored outdoors, even for a scooter that is stored in a covered area.

As the parties have mutually agreed to resolve their dispute regarding smoking, it is unnecessary for me to involve myself in that resolution.

As this tenancy is ending at the end of this month and the Tenant will not benefit from repairs to the patio roof, I find that it is unnecessary for me to issue an Order requiring the Landlord to repair the roof.

At the hearing the parties entered into an agreement that the rent for August would be paid by August 12, 2011. As no other rent is outstanding for this rental unit, I dismiss the Landlord's claim for a monetary Order for unpaid rent. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for unpaid rent for August of 2011 if the Tenant fails to comply with her agreement to pay the rent for August.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. In the event that the Tenant pays the Landlord rent, in the amount of \$1,050.00 for August of 2011 by 7:00 p.m. on August 12, 2011, I Order that this Order of Possession cannot be served until August 29, 2011. In the event that the Landlord does not attend the rental unit between 6:00 p.m. and 7:00 p.m. on August 12, 2011, I Order that this Order of Possession cannot be served until August 29, 2011. In the event that the Tenant is not at the rental unit between 6:00 p.m. and 7:00 p.m. on August 12, 2011 and/or she does not pay her August rent, in full, by 7:00 p.m. on August 12, 2011, I Order that this Order of Possession can be immediately served upon the Tenant.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of the Landlord's Application for Dispute Resolution. Pursuant to section 72(2), I hereby authorize the Landlord to retain \$50.00 from the Tenant's security deposit as compensation for the filing fee paid by the Landlord.

I find that the Tenant's Application for Dispute Resolution has been without merit and I dismiss her claim to recover the filing fee from the Landlord for her Application for Dispute Resolution.

I find that the remainder of the security deposit may be retained by the Landlord until August 31, 2011, at which time it must be disposed of in accordance with section 38 of the *Act*.

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: August 12, 2011.

Residential Tenancy Branch