

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF, MT, CNR, OLC,RP, RR

Introduction

There are applications filed by both parties. The Landlord is seeking an order of possession resulting from a 10 day notice to end tenancy for unpaid rent, a monetary order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit and recovery of the filing fee. The Tenant is seeking an order to allow a Tenant more time to make an application to cancel a notice to end tenancy for unpaid rent, to cancel a notice to end tenancy for unpaid rent, a monetary order request for the cost of emergency repairs, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, an order to have the Landlord comply with the Act, regulation or tenancy agreement, to make repairs to the unit, site or property, to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

As both parties have attended the hearing and have made detailed reference to the evidence submitted, I am satisfied that each has been properly served with the notice of hearing and evidence packages.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to more time to allow an application for dispute?

Is the Tenant entitled to an order to cancel a notice to end tenancy?

Is the Tenant entitled to a monetary order?

Is the Tenant entitled to an order to make repairs?

Is the Tenant entitled to an order to allow the reduction of rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This Tenancy began on April 26, 2011 on a fixed term until April 30, 2012 as shown in the submitted copy of the signed tenancy agreement. The monthly rent is \$3,000.00 payable on the 1st of each month and a security deposit of \$1,500.00 was paid to the Landlord on April 16, 2011.

The Landlord states that the Tenants failed to pay rent and served a 10 day notice to end tenancy for unpaid rent dated November 7, 2011. The Landlord states that this was posted to the door of the rental unit on November 7, 2011. The Landlord previously served a notice to end on October 13, 2011, but is pursuing the updated notice served November 7, 2011. The Tenant stated in their evidence that this notice was received on November 8, 2011. The Tenant states that leave to reapply was granted for the first notice on Residential Tenancy Branch File No. 781699. I note on the decision given that the Tenants withdrew their application and that as the Landlord had not appeared that leave to reapply was given. It was also noted that, "Leave to reapply is not an extension of any applicable limitation period." As such the Tenant's application for more time is dismissed. The Tenants stated in both their direct testimony and that of the documentary evidence that rent was withheld by the Tenant because of repair issues not dealt with by the Landlord.

The Landlord is seeking recovery of unpaid rent from October 2011 to January 2012 (4 months) of \$12,000.00. The Landlord is also seeking recovery of late rent fees of \$25.00 per month for the 4 months totalling, \$100.00. The Landlord relies on the signed tenancy agreement for late rent fees.

The Tenant has made a claim for monetary compensation for emergency repairs. The Tenant relies on documentary evidence submitted for repair issues from the beginning of Tenancy that was not dealt with by the Landlord. The Landlord disputes this stating that the issues were addressed and that no deficiencies existed. The Landlord states that no emergency existed for repairs. The Tenant states that from April 28, 2011 to the date of the hearing, that the Landlord has not properly addressed the repairs sought. The Landlord has not submitted any evidence in support of any work done or investigated. The Tenant states that the emergency repairs of a kitchen faucet and a bathroom faucet went from regular repairs to an emergency when the water leaked periodically to requiring the emptying of a 1 gallon bucket once a day. The Tenants have provided two invoices for work from Milani Plumbing Drainage and Heating. The first invoice dated June 21, 2011 for \$706.72 for a bathroom faucet leak and maintenance on a kitchen hot water faucet. The other Milani invoice dated August 31, 2011 is for \$624.97 for the repair of a leaking kitchen faucet and the replacement of a bathroom sink pop-up. Both invoices do not provide a detailed accounting of the

repairs/maintenance performed. The Landlord states that they did not authorize or have an agreement with the Tenant for these emergency repairs. The Tenants have not provided any details of notice to the Landlord for these emergency repairs nor have they provided any evidence of an agreement.

Analysis

I find based upon the direct testimony of the Tenant that the Landlord has established a claim for unpaid rent. The Tenant's application for more time has not been made and is dismissed. In any event, in the Tenants gave direct testimony that rent was withheld for emergency repairs. Section 26 of the Residential Tenancy Act states,

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenants failed to pay rent and did not have a Decision/Order from the RTB allowing them to withhold rent. To the date of this hearing the Tenant has failed to pay rent. On this basis, I find that the Landlord is entitled to an order of possession. The Tenant must be served with the 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. As the Tenancy is ending, I decline to make any orders for the Tenant's claims for the Landlord to make repairs to the unit or to reduce rent.

As for the monetary claim for unpaid rent, since the Tenant has confirmed non payment of rent since October, the Landlord has established a monetary claim for unpaid rent of \$12,000.00 (October 2011 to January 2012). I find that the Landlord is not entitled to recovery of late rent fees. The signed tenancy agreement being relied upon by the Landlord discloses no late rent fee clause or any agreement to pay this amount. This portion of the Landlord's claim is dismissed.

Section 33 of the Residential Tenancy Act states,

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

(a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I find that the water leaks for the bathroom and the kitchen constituted an emergency for repairs in June and again in August based upon the invoices. However, the Tenant has failed to provide any evidence that they made at least 2 attempts to telephone the Landlord and give the Landlord reasonable time to make the repairs. Section 33 (5) does not apply. As such, I dismiss the Tenant's claim for the reimbursement of emergency repairs.

The Landlord has established a claim for unpaid rent of \$12,000.00. The Landlord is entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$1,500.00 security deposit in partial satisfaction of the claim and I grant the Landlord a monetary order for \$5,050.00. The Landlord's claim is limited to their application filed for a monetary order for \$5,000.00.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$5,050.00.

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: January 06, 2012.

Residential Tenancy Branch