



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF, CNR, LAT

Introduction

This hearing dealt with applications from the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The male tenant's only participation in this hearing was to provide his authorization to the female tenant to act on his behalf.

Preliminary Matters

The female tenant (the tenant) testified that she gave the landlord the tenants' notice to end this tenancy verbally during November 2011 and by email on November 30, 2011. The landlord testified that the tenants did not provide him with their email notice until December 1, 2011. The landlord testified that he has never received a written notice to end this tenancy from the tenants.

The tenant testified that they sent the landlord a copy of their dispute resolution hearing package by a Canada Post registered mail service on December 8, 2011. The tenant

provided a copy of the Canada Post Tracking Number for this mailing. The landlord confirmed that he received the tenants' dispute resolution hearing package by Canada Post's Priority Post service. I am satisfied that the tenants served this package to the landlord in accordance with the *Act*.

The tenant testified that the tenants sent the landlord their written evidence package by Canada Post's Priority Post service on December 14, 2011. She provided a copy of the Canada Post Tracking Number to confirm this mailing. The landlord testified that he had not received the tenants' written evidence package.

At the hearing, I found that the tenants' evidence was deemed to have been served to the landlord on December 19, 2011, the fifth day after its mailing. I made this determination pursuant to sections 89(2) and 90(a) of the *Act*. I did note that the copies of photographs provided by the tenants were of such poor quality that I could not attach any weight to them. The landlord objected to the acceptance of the tenants' written evidence. However, for the reasons outlined below, much of the tenants' evidence dealt with issues that were withdrawn from both applications. The tenant provided oral testimony regarding those portions of the tenants' submission that remained in dispute at this hearing.

The parties agreed that the landlord posted his 10 Day Notice on their door on December 2, 2011 and the tenant agreed that the tenants received this Notice. The parties agreed that the tenants were handed a copy of the landlord's dispute resolution hearing package on December 12, 2011. I am satisfied that the landlord's 10 Day Notice, his hearing package and his written evidence were served in accordance with the *Act*.

At the hearing, the tenant said that the tenants vacated the rental unit on December 15, 2011 and left the keys for the rental unit locked inside the rental unit. The landlord said that he was uncertain as to whether the tenants had vacated the rental unit and has not proceeded to obtain possession of the rental unit pending the outcome of this hearing. He asked for an Order of Possession.

Since the tenants have vacated the rental unit, the tenant withdrew her application to cancel the landlord's 10 Day Notice. For the same reason, the tenant withdrew the tenants' application to be given authorization to change the locks. As the landlord was still interested in obtaining an Order of Possession to confirm his right to take possession of the rental unit and the tenant had no objection to his application for an Order of Possession, I advised the parties at the hearing that I was granting an immediate Order of Possession to the landlord.

During the course of this hearing, the landlord withdrew his application to retain a portion of the tenants' security deposit for damage arising out of this tenancy. He said that he plans to make formal written requests to conduct a joint move-out condition inspection with the tenants. The landlord's application for a monetary award for damage arising out of this tenancy is withdrawn. The landlord is at liberty to reapply for a monetary award for damage arising out of this tenancy once he has a clear understanding of the condition of the rental unit at the time he takes possession from the tenants.

At the conclusion of this hearing, the tenant provided a mailing address at which the landlord could serve the tenants with any documents arising out of this tenancy. For the purposes of the service of documents, the tenant agreed that the tenants could be served documents regarding this tenancy at the following address:

123 Anywhere Street
Anytown BC

I order that the above address is where the tenants can be served with documents regarding this tenancy.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the tenants entitled to a monetary award for their losses arising out of this tenancy? Are either of the parties entitled to recover their filing fees for their applications from the other party?

Background and Evidence

This tenancy commenced as a six-month fixed term tenancy on July 15, 2009, converting to a periodic tenancy at the expiration of the six-month period. Monthly rent by the end of this tenancy is \$1,135.00. The landlord, who purchased this property after the tenants commenced their tenancy, continues to hold the tenants' \$550.00 security deposit paid on or about July 15, 2009.

Although there are some statements on the original residential tenancy agreement regarding the condition of the premises when the tenancy began, the parties agreed that no condition inspection report was issued by the previous landlord regarding any joint move-in condition inspection of the premises. The landlord has conducted what he described as his own pre move-out condition inspection, but has not conducted a joint move-out condition inspection with the tenants. He said that he intends to request that the tenants participate in a joint move-out condition inspection.

The tenants applied for a monetary award of \$100.00, as they maintained that they have lost a china set given to the female tenant by her mother after the landlord entered their rental unit and removed items from their cupboards.

The landlord's application for a monetary award of \$2,345.00 included the following items:

Item	Amount
Unpaid December 2011 Rent	\$1,135.00
Loss of Rent for January 2012	1,135.00
Late Fees - (3 x \$25.00 = \$75.00)	75.00
Total Monetary Award	\$2,345.00

The tenant testified that the tenants should not be responsible for the rent the landlord was claiming because of the landlord's actions following December 1, 2011. She provided undisputed oral and written testimony that the landlord sent the tenants an email on December 1, 2011 advising them that he intended to conduct his "pre move-out inspection" on December 2, 2011. The tenants did not agree with this entry into their rental unit. The landlord did not dispute the tenant's claim that the landlord entered the suite, removed cabinet doors from their kitchen, and emptied the contents of some of the cupboards and drawers. The landlord did not dispute the tenants' claim that he also removed pictures, mirrors and hooks from the walls and "mudded" the walls preparing the rental unit for drywalling and/or painting. She said that some of the mudding of the walls ended up on their furniture and upholstery.

The tenant also gave undisputed testimony that the landlord sent them a notice advising the tenants that he needed use of the premises from 9:00 a.m. until 5:00 p.m. from December 5th until December 12th to enable him to conduct repairs to the rental unit and to show the rental unit to prospective tenants. At the hearing, the landlord confirmed that the primary need for use of the rental unit over this period was to conduct repairs. He said that he needed to make the premises more attractive to prospective new tenants and in this way mitigate the tenants' losses for unpaid rent for December 2011 and January 2012.

The tenant also gave undisputed oral testimony that the landlord tried to gain access to the premises on December 12, 2011 and became verbally abusive in the process. When the tenant refused to let him in the front door of the rental unit and locked the door from the inside, he said that he would enter through the rear entrance. She stopped him from entering that exit as well, and called the police to prevent him from entering the premises. The landlord did not contradict any of the tenant's evidence

regarding this incident, but said that his purpose for attending was to serve the tenants with his written evidence package, which did occur through the direct intervention of the police as the intermediary in the service of these documents.

After this incident, the tenant said that the tenants decided to end their tenancy by December 15, 2011, as they considered the landlord to have breached their tenancy agreement by his actions in entering their suite and attempting to conduct extensive renovations while they were still living there with their 4 month and 6 year old children.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for December 2011, the tenants would have needed to provide their notice to end this tenancy in writing before November 1, 2011. Similarly, in order to avoid any responsibility for rent for January 2012, the tenants would have needed to provide their notice to end this tenancy in writing before December 1, 2011. Section 52 of the *Act* requires that a tenant provide this notice in writing; emails do not satisfy this provision of the *Act*.

In addition, I note that even if emails were allowed under the *Act* to satisfy the requirements of section 52, the tenants entered into written evidence a copy of their 1:30:46 p.m. December 1, 2011 email advising the landlord that they were intending to end their tenancy as per information provided to him on November 30, 2011. Although the tenants maintained that their email confirmed their intention to vacate by December 31, 2011, there is no mention of the date they were intending to end their tenancy in their December 1, 2011 email. Earlier evidence cited the tenants' intention to vacate by mid-December as they were expecting to occupy a home they had purchased at that time.

There is undisputed evidence that the tenants have not paid any rent to the landlord after their November 2011 rent was received. As such, the landlord would normally be entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. In his stated attempt to minimize the

tenants' losses for December 2011 and January 2012, I find that the landlord has effectively treated the tenants as if the tenancy had already ended due to their failure to pay their December 2011 rent. Without an Order of Possession and without proper authorization, the landlord entered the tenants' premises and commenced repair work. In doing so, I find that the landlord removed cabinet doors and drawers, commenced repairs that he viewed as necessary, and generally proceeded as if the tenants were no longer there and had no legal right to continue their tenancy. By moving their personal belongings and repairing walls without proper authorization to do so, he significantly affected their quiet enjoyment and sense of security that they were entitled to as part of their tenancy agreement. He had no legal right to conduct repairs around them while they continued in this tenancy, nor was he allowed to notify them that he would be commencing major repairs for eight hours each day for an entire week. While the landlord's motivations may have been directed at getting his rental unit renovated as quickly as possible so as to reduce the tenants' losses for unpaid rent, this is not an undertaking that he could commence to this extent while this tenancy remained in place.

I find that the tenants harboured genuine safety and security concerns after the December 12, 2011 incident in which police had to be called to restrict the landlord's access to the rental unit. Under these circumstances, I find that the landlord's actions prompted the tenants to end their tenancy earlier than they wished. Rather than discharging his duty under section 7(2) of the *Act* to minimize the tenants' losses, I find that the landlord's actions in fact had the opposite effect on the tenants and precipitated their departure.

Consequently, I find that the landlord's eligibility to unpaid rent for December 2011 and a loss of income for January 2012 expired on December 15, 2011, by which time the tenants had physically discontinued living in the rental unit. For that reason, I dismiss the landlord's application to recover unpaid rent for the period from December 16, 2011 until December 31, 2011 without leave to reapply. I similarly dismiss the landlord's application to recover his loss of rent arising out of this tenancy for January 2012 without leave to reapply.

For the period from December 1, 2011 until December 15, 2011, the landlord would have been entitled to receive \$549.19 (i.e., $15/31$ of the monthly rent for that month - $\$1,135.00 \times 15/31 = \549.19), but for his actions. Due to the actions taken by the landlord during the first 15 days of December, I reduce the tenants' rent by one-half to \$274.60 to reflect the tenants' loss of quiet enjoyment over that period. I find that the landlord is entitled to a monetary award of \$274.59 for the remaining portion of December 2011 for which I find he is eligible to receive unpaid rent from the tenants.

Based on the landlord's undisputed evidence regarding late fees, I find that the landlord is entitled to a monetary award of \$75.00 for late fees for three months as claimed in his application.

As the landlord was partially successful in his application, I allow him to recover \$25.00 from his filing fee from the tenants.

I dismiss the tenants' application for a monetary award for recovery of a damaged or seized china set from their premises as I am not satisfied that the tenants have provided sufficient evidence to warrant any such award. Other than the tenant's oral and written evidence, I have no evidence that the china set existed or that the landlord was responsible for the tenants' loss of this possession. They provided no receipts, photographs that could be viewed, or other credible information to form the basis for a monetary award for this item. The tenants bear their own responsibility for their filing fees.

Although the landlord asked to withdraw his application to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in satisfaction of the monetary award issued in this decision.

I allow the landlord to retain his \$349.59 monetary award (\$274.59 + \$75.00) and \$25.00 of his filing fee from the tenants' security deposit. The revised amount of that security deposit is reduced from \$550.00 to \$175.41. The provisions of section 38 of the *Act* apply to the landlord's return of the remaining portion of the security deposit to the tenants.

Conclusion

The landlord is provided with a formal copy of an immediate Order of Possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary award in the landlord's favour in the amount of \$274.59 for unpaid rent in December 2011, of \$75.00 for late fees, and \$25.00 for recovery of a portion of the landlord's filing fee. In order to obtain this monetary award, I order that the retained portion of the tenants' security deposit held by the landlord is reduced from \$550.00 to \$175.41.

I dismiss the remainder of the landlord's claim for unpaid and lost rent after December 16, 2011, without leave to reapply. The remainder of the landlord's application for dispute resolution is withdrawn, with leave to reapply.

I dismiss the tenants' application for a monetary award and recovery of their filing fee without leave to reapply. The remainder of the tenants' application is withdrawn.

I strongly advise the landlord to review the copy of **A Guide for Landlords and Tenants in British Columbia** that I am enclosing with his copy of this decision if he intends to continue renting premises to tenants in this province.

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: December 21, 2011

Residential Tenancy Branch