



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNDC, FF, O, CNR, RR

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 and for breach of the tenancy agreement pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72; and
- other unspecified remedies.

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; and
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord testified that she handed the 10 Day Notice to Tenant BB on March 2, 2012. Tenant YS (the tenant) who spoke on behalf of the tenants throughout this hearing testified that the landlord handed Tenant BB the 10 Day Notice on March 5, 2012. I accept that the landlord served the 10 Day Notice to the tenants by at least March 5, 2012. The tenant confirmed that the landlord handed the tenants a copy of the landlord's dispute resolution hearing package on March 12, 2012 and that they were all aware of the contents of that package. The landlord confirmed that the tenants handed her a copy of their dispute resolution hearing package on March 12, 2012. I am satisfied that the parties served the above documents to one another in accordance with the *Act*.

At the hearing, both parties testified that they served one another with a complete copy of their evidence packages. The landlord's initial evidence package including a copy of the 10 Day Notice and the signed Residential Tenancy Agreement (the Agreement)

were provided to the tenants in accordance with the time frames established under the Act. The remainder of the evidence packages provided by the parties to one another were served within the week prior to this hearing. The Residential Tenancy Branch (RTB) received the landlord's subsequent written evidence package, 5 pages of documents, on March 23, 2012. The tenant said that the tenants had received this evidence and had reviewed this material. The only document of importance or real relevance to the matter before me of this material was a copy of a February 1, 2012 receipt given to the tenants by the landlord. The tenant confirmed that the landlord provided this receipt for the payment of \$737.50 towards their February 2012 rent in early February.

The tenants' written evidence, much of which was comprised of unclear photographs, the relevance of which was marginal, was handed to the RTB the day before this hearing. Due to the late delivery of this material to the RTB, I asked the landlord's agent if these documents had been delivered to the landlord and if the landlord had considered the tenants' evidence. The landlord's agent testified that the landlord only received the tenants' documents earlier on the morning of the hearing and had not had an adequate opportunity to review this material or discuss it with the landlord's agent (her son). At this point, the tenant objected to the late delivery of the 5 pages of written evidence submitted by the landlord, saying that she did not receive this material until a few days before this hearing.

At the hearing, I advised both parties that I would not be considering either set of late evidence, as I was not satisfied that they had delivered these documents to one another in sufficient time to adequately address the issues raised in the documents. Since the tenants clearly had a copy of the February 1, 2012 receipt, I agreed to consider only that document of the landlord's late written evidence received by the RTB on March 23, 2012. As the principal issue at hand is one of delayed payment of rent and utilities and the tenants' failure to pay their security deposit, I was not prepared to adjourn this matter as the landlord wished to obtain a decision regarding this matter and would be unfairly adversely affected by any delay. Based on the oral testimony of the parties it did not appear to me that much if any of the late written evidence pertained to the central issue of whether or not the tenants have paid outstanding rent or utilities, the reason cited by the landlord for seeking an end to this tenancy in the landlord's 10 Day Notice.

The only alleged breach of the tenancy agreement was the tenants' failure to pay their rent or utilities on time, or their security deposit. As the only notice to end tenancy issued by the landlord was the 10 Day Notice, this is the only basis for considering the landlord's application to end this tenancy.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and/or utilities? Is the landlord entitled to recover the filing fee for this application from the tenant? Are the tenants entitled to a monetary award for losses arising out of this tenancy? If this tenancy were to continue, are the tenants entitled to reduce their rent for services or facilities that the landlord committed to provide as part of their tenancy agreement but has failed to provide?

Background and Evidence

This periodic tenancy commenced on February 1, 2012. According to the signed Agreement, monthly rent is set at \$850.00, payable in advance on the first of each month. According to this Agreement, the tenants were also responsible for paying heat and hydro beyond the \$850.00 monthly rent. The landlord's agent testified that the tenants were to be charged \$150.00 every two months for hydro and a charge for gas (heat) every month. Although the tenant agreed that the tenants were to pay \$150.00 each month for hydro, she said that the original advertisement for the rental of this rental unit stated that heat was included with the rent. She referred to a copy of the original advertisement that she had submitted as late evidence. The signed Agreement entered into evidence by the landlord noted that heat was not included in the monthly rent to be charged to the tenants.

The landlord entered undisputed oral and written evidence that the tenants have not paid the \$425.00 security deposit set out in the Agreement.

The landlord applied for an end to this tenancy and Order of Possession on the basis of the tenants' failure to pay all of the monthly rent for February 2012, any of the monthly rent for March 2012, and the security deposit. The parties agreed that the tenants did pay \$737.50 in rent for February 2012, but have not paid the remaining \$112.50 for the month, nor have they made any further payments for March 2012 rent, utilities or the security deposit. The landlord's application for a monetary award of \$1,550.00 included \$125.00 for unpaid rent for February 2012, \$850.00 for March 2012, \$150.00 for unpaid utilities for February 2012 and the unpaid \$425.00 security deposit.

The tenants applied for a monetary award of \$300.00 for their loss of facilities and services, and their repairs of damage, principally caused by three floods that they maintained damaged their rental unit and their possessions. The tenants did not deny that rent was owing for part of February 2012 and all of March 2012.

At the hearing, the tenants said that they would like to remain in the rental unit and did engage in discussions with the landlord's agent to determine if they could identify a basis whereby they could make payments that would enable them to continue in this tenancy. The parties were unable to reach an agreement.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer (DRO) may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 65(1)(f) of the *Act* also allows a DRO to make an order "that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement" if the DRO finds that a landlord has not complied with the *Act*, the regulations or a tenancy agreement. Similarly, section 28 of the *Act* grants tenants a right to quiet enjoyment of the premises.

I find that a number of problems have arisen during the course of this short tenancy which have decreased the value of this tenancy agreement. For example, the tenants testified that they have not been able to use all of the appliances in full (e.g. fridge, stove) and there have been problems with drainage and flooding that have impacted their tenancy. While the tenants have taken measures themselves to address some of these issues, I am not satisfied that they have provided sufficient evidence to demonstrate that they raised these issues formally with the landlord or that they had the landlord's permission to incur costs that the landlord would reimburse them for, as the tenant claimed. The landlord testified that she did not promise to reimburse the tenants for the repairs that the tenants claimed had to undertaken in order to make their rental unit habitable. There is an absence of details regarding these arrangements and the difference of opinion as to the extent of the flooding that occurred. The tenant said that there were three floods since the beginning of their tenancy and that it affected their living area. The landlord's agent testified that the flooding only impacted the carport area and did not damage the living area of the rental property. I am not satisfied that the tenants were justified to incur emergency repairs on this property or that any expenses that they may incurred enabled them to forego paying the rent identified as owing in the landlord's 10 Day Notice.

I find that there is undisputed evidence that the tenants failed to pay that portion of their February 2012 rent outstanding on March 2, 2012 or any of their March 2012 rent within five days of receiving the 10 Day Notice. The tenant's application for dispute resolution has been unsuccessful as they have not demonstrated that they were entitled to withhold their rent after receiving the 10 Day Notice. As the tenants have not paid all of the rent that I determine to have been owing as of March 2, 2012, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the evidence before me, I find that the tenants are entitled to a reduction in rent of \$75.00 for each of February and March 2012 to reflect the deficiencies in their tenancy, the costs and work that they undertook to remedy these deficiencies, and the landlord's failure to provide the services and facilities that she committed to provide as part of the Agreement.

I find that the landlord is entitled to a monetary award of \$37.50 for February 2012 (i.e., \$112.50 - \$75.00 reduction in rent = \$37.50) and \$750.00 for March 2012 (i.e., \$850.00 - \$75.00 reduction in rent = \$775.00). Since the parties agreed that the tenants were responsible for paying \$150.00 for hydro every two months and this tenancy has lasted approximately two months, I find that the landlord is entitled to a monetary award of \$150.00 for unpaid hydro during this tenancy.

I dismiss the landlord's claim for a monetary award of the unpaid security deposit as there is no need at this stage to obtain that deposit to comply with a tenancy that is ending. I also dismiss any claim for unpaid gas owing for this tenancy without leave to reapply as the landlord did not provide evidence to demonstrate that the landlord has incurred actual losses in this regard.

Since the landlord's application has been successful, I allow the landlord to recover her filing fee from the tenants.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). 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 Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent, utilities and the filing fee for this application:

Item	Amount
Unpaid February 2012 Rent Less Reduction(\$112.50 - \$75.00 = \$37.50)	\$37.50
Unpaid March 2012 Rent Less Reduction (\$850.00 - \$75.00 = \$775.00)	775.00
Unpaid Utilities	150.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,012.50

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 28, 2012

Residential Tenancy Branch