



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR, MNR, MNSD, FF
Tenant: CNR, MNDC, RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order and the tenant sought to cancel a notice to end tenancy and for a monetary order and a rent reduction.

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

During the hearing, the landlord stated that she did not wish at this time to include retaining the security deposit, as such I amend the landlord's Application to exclude matters related to the security deposit.

During the hearing the parties attempted to reach a settlement agreement but as there was at least one outstanding issue they could not agree upon an agreement could not be reached.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to a monetary order for compensation for a violation of the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and for a rent reduction for repairs, services, or facilities, pursuant to Sections 38, 46, 67, and 72 of the *Act*.

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The parties testified that when a tenancy agreement was signed the tenant had completed an agreement and the landlord had completed a separate agreement and both parties signed each of these agreements. The landlord provided a copy of the agreement she has; the tenant did not provide a copy of the agreement she has. The landlord testified the tenancy began on November 1, 2011 as a 6 month fixed term tenancy with a monthly rent of \$750.00 plus \$50.00 utilities due on the 1st of each month with a security deposit of \$375.00 paid.

The tenant submits the landlord has recently changed the locks on the garage door and she is uncertain if the neighbour who had access before still has access to both the garage and rental unit because the keys work in both doors. The tenant confirmed she had not spoken to the landlord yet regarding this issue.

The tenant testified the tenancy agreement she has indicates that cable is included in the services provided but that once she moved in the landlord advised her that cable was not available without the tenant incurring an additional cost to purchase a receiver.

The landlord testified that the tenancy agreement she has does not include the provision of cable and that she is not intending to rent this unit again so had no intention of providing cable and she told the tenant that. The tenant seeks reduced rent as a result.

The tenant seeks compensation for the loss of use of the bathroom in the rental unit due to severe weather conditions experienced in the community on January 17-19, 2012 due to pipes freezing. The tenant testified the landlord offered the use of the bathroom in the main use but she declined the offer due to privacy.

The tenant submits that although she received the 10 Day Notice to End Tenancy for Unpaid Rent on February 7, 2012 and that the landlord substituted the date of issue of this notice for the effective date and as such there is no effective date for the notice and that it should be deemed invalid.

The tenant she has not been able to pay rent for February or March 2012 as her circumstances had changed and she is currently securing some new contracts for employment that she hopes to have finalized by March 15, 2012.

The parties agree they had agreed verbally to give the tenant until February 7, 2012 to pay the rent but that since that time the tenant has made no payments to the landlord. The landlord also testified that the tenant had not informed the landlord about this potential new income until the hearing today.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

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

In relation to the tenant's claim for compensation due to the inability to use the bathroom facilities, I find the tenant has established that she suffered an inconvenience as a result of the frozen pipes, but that this was caused through no fault of the landlord.

In addition, I find that as the landlord offered the tenant an alternative until such time as the bathroom in the rental unit was made available the landlord fulfilled her obligations to provide the service and in fact the tenant failed to mitigate any loss by declining the landlord's offer to use the bathroom in the main house.

As to the tenant's claim for compensation for the lack of cable, as the tenant has not provided a copy of a tenancy agreement that differs from the one submitted by the landlord and since both parties disagreement on the discussion they had in regard to cable, I find I must rely only upon the tenancy agreement before me.

As such, I find that the provision of cable was not a part of the tenancy at any time and the tenant is not entitled to either compensation or reduced rent for any period of the tenancy.

Section 46 allows the landlord to end a tenancy by issuing a notice to do so on any day after rent is due according to the tenancy agreement that rent remains unpaid. Section 53 of the *Act* stipulates that if the effective date on such a notice is not correct it will automatically correct to the earliest possible effective date allowed under the appropriate section.

In the case before Section 46 states the earliest possible effective date to end the tenancy is 10 days after the date the tenant receives the notice. As such, I find the effective date of the notice issued by the landlord on February 7, 2012 and served

personally to the tenant on the same date (from the tenant's testimony) to be February 17, 2012.

Conclusion

For the reasons noted above, I find the landlord is entitled to an order of possession effective **two days 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 I grant a monetary order in the amount of **\$1,650.00** comprised of \$1,650.00 rent owed and the \$50.00 fee paid by the landlord for this application.

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: March 01, 2012.

Residential Tenancy Branch