



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, MNDC
OPR, MNR,

Introduction

This hearing dealt with cross applications by the landlord and tenants. The application by the landlord is for an order of possession for unpaid rent and a monetary order for unpaid rent. The application by the tenants is for more time to make an application and money owed or compensation due to damage or loss. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This tenancy began December 5, 2011 with monthly rent of \$1300.00 and the tenants paid a security deposit of \$615.00.

On March 1, 2012 the tenants gave the landlord notice to vacate effective April 1, 2012.

On March 2, 2012 the landlord gave the tenants a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that \$433.33 of the March rent was paid on February 22, 2012 by the ministry and that when she went to speak to the tenant about the balance of the rent, the tenant advised the landlord she would speak to her the following day. The landlord stated that the tenant then gave the landlord notice to vacate the rental unit and has not paid the \$866.67 balance of the March 2012 rent. The reasons for the tenant's notice to end the tenancy was due to the landlord not responding to the tenant's requests for repairs and noise from other units in the rental property.

The tenant testified that on December 6, 2011, the day after taking possession of the rental unit, the tenant sent the landlord a list of deficiencies that had been found in the rental unit. The list included items such as: dirty and damaged walls, no cover on an

electrical plug, smoke alarm hanging from ceiling, windows and doors not properly sealed etc. The tenant stated that on January 21, 2012 she sent the landlord another note about paying full rent for December 2011, possession was not until December 5, there was no water for 4 days and the tenant had been promised a rent deduction.

The landlord responded by stating that she had taken over management of the building on January 1, 2012 and as she went through paperwork for the various issues related to the tenancies, she took care of each problem. The landlord stated that the tenant has since been reimbursed for not having water for 4 days and was reimbursed for not having possession of the rental unit until December 6, 2012.

The tenant referred to the list of December 6, 2012 that she has sent to the landlord regarding the condition of the rental unit. The list notes the unit being dirty, damage to walls, windows and doors not properly sealed etc. The tenant stated that the property does not comply with building codes and that on March 2, 2012 the tenants called the fire department to inspect a smoke detector that was hanging from the ceiling and the landlord refused to fix. The landlord responded by stating that the smoke detector had since been fixed.

The tenant stated that there are many problem tenants in the building which has a total of 40 rental units. The tenant stated that the landlord purposely got letters of support from some of the very tenants who cause problems. The tenant stated that the police are often called to the property, the landlord was beaten up once and the noise and partying continues.

The landlord stated that she was hired by the landlord to rid the building of the problem tenants and make the building a secure and quiet place to live. The landlord stated that she has since evicted 2 of the problem tenants and continues to address issues with other problem tenancies in the building.

The tenant testified that 'all this started' when a blind in the rental unit fell down and hit her daughter in the chest and arm. The tenant stated that the previous tenant had told her that the blinds had fallen down once before. The tenant stated that the landlord had promised some type of monetary compensation but has since refused to offer any compensation to the tenant or her daughter. The tenant stated that her daughter had made one trip to see a medical professional on January 6, 2012; the blinds fell and struck the tenant's daughter on December 22, 2012.

The property owner responded by stating that he had never promised compensation of any kind and that he had brought a blind installation specialist in to fix the blind.

The landlord's witness stated that he had no idea why the blinds had fallen off the bracket as they are held in with a locking mechanism. The witness stated that to ensure this blinds would never fall again he had screwed them into the bracket.

Analysis

Based on the documentary evidence and testimony of the parties I find that the tenant was properly served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and although the tenant did apply for dispute resolution within the required time period, the rent remains unpaid. Based on the above facts I find that the landlord is entitled to an order of possession and a monetary order for unpaid rent.

Accordingly I find that the landlord is entitled to a monetary order for \$866.67.

In regards to the tenant's \$200.00 claim for compensation due to the tenant's peace and quiet enjoyment being disturbed, I find that the landlord has been responding to the issues in this building related to the problem tenancies. Therefore as the landlord is actively taking steps to restore the peace and quiet enjoyment of the tenants in the building and this will take some time to resolve, this portion of the tenant's application is dismissed without leave to reapply.

In regards to the tenant's \$1300.00 claim for personal injury due to the blind falling on her daughter, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to compensation. A claim in Tort is a personal wrong caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find on a balance of probabilities that this claim rises to that requirement.

The tenant submitted documentation that shows the tenant's daughter went to seek medical attention on January 6, 2012, a full 2 weeks after the incident occurred. The tenant did state that the blinds had fallen once before but the tenant has not established in this hearing how this injury was the result of a negligent or deliberate act on the part of the landlord and the landlord brought a professional blind installer in to address the problem. The tenant has also not established what level of influence this injury had on her daughter's day to day life and there is no evidence of continued pain and suffering, loss of wages or other loss in relation to this incident. Therefore this portion of the tenant's application is dismissed without leave to reapply.

The tenant's application is hereby dismissed without leave to reapply with the resulting effect that the tenancy will end 2 days after service of the order of possession on the tenant.

Conclusion

I hereby grant the landlord an **Order of Possession**, effective **2 days** after service of the Order upon the tenant(s). This Order must be served on the tenant(s) and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim for \$866.67 in unpaid rent. I grant the landlord a monetary order under section 67 for the amount of **\$866.67**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia and 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 27, 2012

Residential Tenancy Branch