Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNR, MNDC, OLC, ERP, RP, RR, OPR, MNSD, MNDC, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenants applied to cancel a Notice to End Tenancy for Unpaid Rent, compensation for emergency repairs and repairs, an Order the landlord comply with the Act, make emergency repairs, repairs and that the rent be reduced for repairs, services or facilities agreed upon but not provided.

Each party applied requesting filing fee costs.

The first hearing was held on May 14, 2012; the hearing was reconvened on June 7, 2012.

Both parties were present at each hearing. At the start of each hearing I introduced myself and the participants; at the 2nd hearing they were reminded they continued to provide affirmed testimony.

At the initial hearing the hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

During the initial hearing the landlord stated that B.W. was not acting as his agent; even though B.W. provided much of the testimony in relation to the events that had occurred during the tenancy. B.W. had also completed the tenancy agreement with the tenant

and had accepted the deposit payment on behalf of the landlord. On May 23, 2012, the landlord issued a note, assigning B.W. as his agent. A copy of this note was supplied to the Residential Tenancy Branch.

The tenant's application did not include a detailed calculation of the claim. The total of receipts for potentially verifiable costs was $2,193.14. In the absence of a calculation of the balance of the claim, I determined I would consider the portion of the claim that related to the verified items; the balance of the claim was declined; the tenant has leave to reapply.

The tenant had a witness present at the 2nd hearing; at the start of the reconvened hearing she confirmed that his witness was not able to hear the proceeding and understood the witness would be called when needed. At one point during the hearing I heard the tenant speaking with an individual and determined that her witness was in fact present. As the witness was present, when the tenant had assured me she was not, I determined that the witness testimony would support the tenant's position and did not hear from the witness. I have considered a May 6, 2012, letter submitted by the witness.

The landlord's application has been amended to include a claim for unpaid June, 2012, rent owed.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent or should the Notice issued on April 16, 2012, be cancelled?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit in partial satisfaction of the monetary claim?

Are the tenants entitled to compensation in the sum of $2,193.14 for the cost of emergency repairs and as compensation for damage or loss under the Act?

Must the landlord be Ordered to comply with the Act?

Must the landlord be Ordered to make emergency repairs and repairs to the unit?

Are the tenants entitled to reduce rent owed for repairs, services or facilities agreed upon but not provided?

Is either party entitled to filing fee costs?

Settled Agreement – End of Tenancy

At the start of the reconvened hearing on June 8, 2012, the tenant and landlord agreed that the landlord will be given vacant possession of the home by June 16, 2012, at 1 p.m.

The parties agreed that the landlord will be issued an Order of possession that is effective June 16, 2012, at 1 p.m.

Background and Evidence

The parties agreed that the tenancy commenced on March 1, 2012, rent is $1,700.00 due on the 1st day of each month. A copy of the tenancy agreement was supplied as evidence. The parties did not dispute that in February, 2012, the tenancy agreement was completed and signed at B.W.'s home and that the tenant paid the deposit of $850.00 to B.W.

A move-in condition inspection report was not completed.

The tenant testified that despite repeated verbal requests to B.W., she did not receive a copy of the tenancy agreement until the landlord served copies of his evidence for this hearing. The landlord's agent stated he gave the tenant a copy of the agreement and that on April 2, 2012; he gave the tenant the landlord's telephone number. The copy of the tenancy application/agreement supplied as evidence was not dated and did not supply contact information for the landlord.

The tenant did not supply a detailed breakdown of the claim she has made; however, a number of receipts were submitted as evidence, as follows:

Cleaning – March 15, 2012	650.00
Paint February 27, 2012	65.93
Paint supplies – March 3, 2012	23.08
Paint supplies – February 28, 2012	15.10
Paint supplies – March 3, 2012	10.12
Cleaning supplies – (date not visible)	47.43
Cleaning supplies – March 11, 2012	10.06
Cleaning supplies – (date not visible)	8.38
Paint supplies – (date illegible)	13.71
Paint – March 15, 2012	108.87
Paint supplies – March 15, 2012	31.98
TOTAL	2193.14

The landlord claimed $3,400.00 in unpaid rent and as compensation for damage or loss and the application has been amended to include a claim for unpaid June, 2012, rent in the sum of $1,700.00. No verification of damage or loss was supplied as evidence.

The tenant acknowledged that she made expenditures she wished to apply against April, 2012, rent owed and that she did not pay May or June, 2012, rent owed.

The parties agreed that at the start of the tenancy the home required work and that the tenant was given permission to purchase paint supplies. A number of receipts for painting costs were supplied as evidence; totalling $268.61. The landlord's agent agreed that the tenant should be provided with compensation in relation to the cost of paint supplies; that these costs were to be deducted from rent owed.

When the tenants took possession of the rental unit it was in need of cleaning. The tenant had viewed the home and was told it would be cleaned and painted. When the tenant moved in there were a number of deficiencies, such as a clogged kitchen sink and bathroom sink, moisture in the basement, problems with the electrical power service, an exterior door in the basement that could not be properly locked and a lack of heat.

The tenant supplied a number of photographs of the unit, some of which showed: a large pile of garbage that she had moved outside from the basement; a door latch on the back entry with a damaged door jamb; entry flooring that was broken and lifting; rodent feces in the kitchen, a clogged kitchen sink; cracked and broken windows; walls in need of paint; the furnace; electrical breaker box; a kinked furnace oil line; broken basement entry; broken siding on the exterior of the house; a missing tap in the bathroom; mould or fungus growth along the caulking in the bathroom; garbage left by the previous occupants; a hole in the basement ceiling; holes in walls; exposed wiring; broken light fixtures and missing switch plates.

On March 7, 2012, the tenant wrote the landlord letter requesting specific emergency and non-emergency repairs to the unit. Among the items identified for emergency repair was the furnace. The letter indicated the tenant would look after the items such as holes in exterior walls, painting, cleaning floors and garbage and glass removal from the yard. The tenant gave the letter to the landlord's agent but did not receive a reply to her request for repairs.

After March 7, 2012, the tenant spoke with the landlord's agent on an almost daily basis, asking that repairs be completed. The sinks were repaired and after power was off for 2 days, it was repaired. The tenant did not receive any response to her request for furnace repairs and 1 week prior to commencing repair she told the landlord's agent she would proceed and submit an invoice.

The landlord and tenant agreed that on April 2, 2012, they spoke over the telephone and that the tenant complained of a lack of heat. The tenant confirmed that she did not tell the landlord that she was having a furnace repair company attend the unit on the

next day. The tenant stated that the landlord's agent had not responded to her repeated requests to have the furnace repaired and that she finally made arrangements herself.

The tenant supplied copies of a number of emails sent between herself and the heating repair company representative; commencing March 5, 2012, when the tenant requested a quote for inspection and any necessary maintenance and repair. A May 7, 2012, email indicated that the repairperson had talked with the tenant's landlord; that conversation resulted in the removal of a fuel can the tenant had been using for fuel and connection of the oil tank to the system. The landlord had been informed that the tenant had paid approximately $1,200.00 in cash for the repairs. The landlord was also told that they should "upgrade everything."

A copy of an invoice in the sum of $1,208.48, issued on April 3, 2012, by the heating company, was supplied as evidence. The invoice indicated that on April 2, 2012, it was determined there was no heat, that copper filter holdings, filler, fittings, a nozzle and strainer were installed in the furnace. The flues were cleaned and $60.00 of fuel was added. On April 3, 2012, the oil boiler was started and a new transformer was installed. A new thermocouple was installed on the hot water tank, in the sum of $45.00; boiler parts cost $269.00, tax was $129.48. The invoice included 9 hours of labour at $85.00 per hour; totalling $765.00.

The tenant's witness wrote a May 6, 2012, letter in which she indicated she is a professional cleaner. The tenant provided one of her friend's business cards; which indicated she is a professional cleaner. The witness indicated she was shocked by the state of the home at the start of the tenancy and told the tenant the landlord should hire someone to clean. The landlord's agent had agreed to pay for cleaning at a rate of $20.00 per hour; less than her standard rate and that an invoice was given to the agent once the cleaning had been completed. The tenant paid her friend by cash. The tenant and her witness confirmed that the invoice had provided the tenant's telephone number; that this occurred in error.

The landlord submitted that the tenant has no credibility as she misled the landlord by initially telling him that her mother was her previous landlord. The landlord was not informed of the work the tenant was having completed on the furnace and even when he spoke with the tenant on April 2, 2012, she failed to inform him of the repair work she had arranged.

The landlord had told the tenant to obtain 3 quotes for cleaning services and that a service would then be chosen. The photographs supplied by the tenant showed garbage that the tenant had removed from the basement; the landlord had planned on having this garbage hauled away and eventually a dumpster was made available. When the landlord received the cleaning invoice from the tenant they believed it was fraudulent; it did not indicate any tax had been paid and the tenant's phone number was supplied as the business number. The landlord stated that the cleaning invoice was made out in the tenant's name; the witness indicated she could reissue the invoice in

the landlord's name. The witness indicated the landlord's agent had not asked to have the invoice altered and that he had approved of the cleaning.

The landlord supplied photographic evidence that showed repairs that were being completed in the unit and areas of the crawl space that were to have been cleaned by the tenant's cleaner. The crawl space was not cleaned, as indicated on the invoice.

The landlord alleged that the tenant placed the landlord's property at risk by using a fuel can for heating oil, rather than the oil tank. The fuel can was used for a month and was not removed until the landlord called the repair company and had the heating oil tank connected to the system. The tenant was to call the company herself. The landlord alleged that the tenant purposely damaged the heating oil line and that she did not have authorization to hire the repair company.

The landlord's agent alleged that from March 15 to May 2, 2012, he was denied access to the home to complete repairs he was making to the unit.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Based on the testimony of the landlord's agent I find that the tenants were entitled to deduct $268.61 from April, 2012, rent owed for paint and paint supplies. The landlord had agreed to reimburse the tenant these costs from rent owed. There was no term of the tenancy agreement that reflected deductions from rent for work performed or supplies purchased; however, the landlord's agent has confirmed that a verbal agreement had been made to do so.

Based on the evidence before me I find that the landlord failed to properly identify B.W. as his agent at the start of the tenancy; although I find it is apparent that B.W. did act on behalf of the landlord. It was not until this hearing had adjourned that the landlord formally identified B.W. as his agent. This could reasonably lead to confusion on the tenant's part; as B.W. had essentially acted as agent by accepting the security deposit and communicating with the tenant on behalf of the landlord.

I find that the tenant properly informed the landlord and his agent of the need to repair the furnace. The landlord made no attempts to investigate the report of heating issues; given to his agent, in writing, on March 7, 2012. The landlord submitted that the furnace had always worked, but clearly the tenant was reporting that it had malfunctioned. If the landlord had taken steps to investigate the report and to ensure that the furnace was

operational, the tenant would not have been forced to arrange for repair. It is not the tenant's responsibility to obtain quotes for repair; that is the job of the landlord. The landlord was not required to pay for hearing oil but had a responsibility to ensure the heating system was fully operational.

I have accepted the tenant's version of events, that she spoke with B.W. in an attempt to arrange repairs and that this contact, combined with the March 7, 2012, letter more than fulfilled the tenant's obligation to notify the landlord of the need for furnace repair.

The tenant did obtain the landlord's telephone number on April 2, 2012, and spoke with him on that date. By this time I find it is reasonable to expect the landlord knew the furnace was not operational and, given the March 7, 2012, letter, that he was required to take action and ensure any necessary repairs were completed within a reasonable period of time; this did not occur. I have rejected the landlord's submission that the furnace had worked well for years. Even if the furnace required heating oil, I find that the landlord failed to supply a home that met the requirements of section 32 of the Act. Heat is an essential service of a tenancy and malfunction of the heating system requires a response by the landlord within a reasonable period of time.

Section 32 of the Act provides, in part:

> ***32*** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> > *(a) complies with the health, safety and housing standards required by law, and*
> > *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

Therefore, I find that the tenant has suffered a loss, that the landlord breached the Act by failing to provide a rental unit that complied with section 32 of the Act, that the tenant has provided verification of the loss and that she attempted to mitigate the loss by requesting repair to the heating system. Therefore, I find the tenant is entitled to compensation in the sum of $1,208.48 for furnace repair; less the $60.00 charge for fuel.

Whether the tenant took possession of the unit before the first of the month or not; the landlord failed to comply with the Act, by completing a move-in condition inspection report that detailed the condition of the home, as required by section 23 of the Act. From the photographs supplied by the tenant I find that the home was not in a reasonably clean state at the start of the tenancy and that the tenant is entitled to compensation for the cleaning costs detailed in the receipts for supplies. Further, the landlord had acknowledged cleaning was required, but failed to take steps to arrange this cleaning himself.

In relation to the cleaning service invoice in the sum of $650.00, I find that the tenant has failed to prove, on the balance of probabilities, that she paid $650.00 cash for cleaning services. However, Residential Tenancy Branch policy suggests that a dispute resolution officer may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

I find that the tenant is entitled to nominal compensation in the sum of $200.00 for cleaning that was completed. Garbage was left in the basement, rodent feces; and the generally unclean state of the home resulted in the tenant taking possession of a rental unit that was not to the standard contemplated by the Act. The balance of the claim for cleaning is dismissed.

	Claimed	Agreed	Accepted
Heating system – April 3, 2012	1208.48		1148.48
Paint February 27, 2012	65.93	65.93	
Paint supplies – March 3, 2012	23.08	23.08	
Paint supplies – February 28, 2012	15.10	15.10	
Paint supplies – March 3, 2012	10.12	10.12	
Cleaning supplies – (date not visible)	47.43		47.43
Cleaning supplies – March 11, 2012	10.06		10.06
Cleaning supplies – (date not visible)	8.38		8.38
Paint supplies – (date illegible)	13.71	13.71	
Paint – March 15, 2012	108.87	108.87	
Paint supplies – March 15, 2012	31.98	31.98	
	2193.14	268.79	1414.35

I find, based on the acknowledgment of the tenant that rent was not paid for April, May and June and that the landlord is entitled to compensation in the sum of $5,100.00; less the $850.00 security deposit and the sum owed to the tenant; $1,683.14.

Therefore, the landlord is entitled to compensation in the sum of $2,566.86.

As each application ahs merit I decline filing fees to either party.

I have enclosed a copy of the *Guide for Landlords and Tenants in British Columbia*, for each party.

Conclusion

By mutual agreement the landlord has been granted an Order of Possession that is effective at **1 p.m. on June 16, 2012**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The tenant has established a monetary claim in the sum of $1,683.14 for damage or loss under the Act.

I find that the landlord has established a monetary claim, in the amount of $5,100.00, which is comprised of unpaid rent from April to June, 2012, inclusive.

The landlord will be retaining the tenant's security deposit in the amount of $850.00, in partial satisfaction of the monetary claim.

I have set off the amount owed to the tenant, by applying it to the amount owed to the landlord. Based on these determinations I grant the landlord a monetary Order for the balance of $3,416.86**.** In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court 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: June 14, 2012.

Residential Tenancy Branch