



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, AAT, RR, FF, O

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for a monetary order for the cost of emergency repairs; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order allowing access to or from the unit or site for the tenant or the tenant's guests; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

The tenant attended the conference call hearing on June 6, 2012 and requested an adjournment of the hearing stating that the tenant had been in hospital until the Thursday prior to the hearing date, and that the bank had served the tenant with foreclosure documents. The landlord did not attend the hearing, however the matter was adjourned to June 27, 2012 and the Residential Tenancy Branch provided both parties with a copy of a Notice of Adjourned Hearing which scheduled the hearing for June 27, 2012 at 11:00 a.m. The tenant was ordered to serve the landlord with any evidence that the tenant intended to rely on at the hearing at least 5 days before the June 27, 2012 hearing date.

On June 27, 2012 the tenant again attended the conference call hearing, however, despite being served with the tenant's amended application and evidence package, the landlord did not attend. The tenant testified that the landlord was personally served on June 21, 2012, and I find that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to a monetary order for the cost of emergency repairs?

- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to an order allowing access to or from the unit or site for the tenant or the tenant's guests?
- Is the tenant entitled to an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testified that this fixed-term tenancy began on April 15, 2012 and expires on April 15, 2013. Rent in the amount of \$1,300.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. The landlord did not collect a security deposit or a pet damage deposit from the tenant, and no move-in condition inspection report was completed. The rental unit is a house with no other suites.

The tenant further testified that the tenancy agreement was signed by the parties on April 12, 2012 and the landlord agreed that the tenant could move furniture into the rental unit on April 13, 2012, but when the tenant arrived, the landlord was still living in the house and there was no power. The tenant called the landlord who said he would be over after work. When the landlord arrived he threw his furniture and belongings out into the back yard and the front yard of the house. The landlord did not call BC Hydro to advise that the rental unit was tenanted, and when the tenant called the hydro company, the tenant learned that the tenant was not able to get the hydro connected until the tenant provided a copy of a tenancy agreement to BC Hydro, which the tenant provided on April 20, 2012. There was no electricity in the house prior to that. The tenant had to stay with friends until hydro was connected. The tenant claims \$400.00 for lodging.

The tenant further testified that the landlord didn't have any keys to the house and told the tenant it was the tenant's responsibility to get some. The tenant had the locks changed and received 2 sets of keys and provided a receipt in the amount of \$209.00 which the tenant claims as against the landlord.

The hot water tap in the bathtub ran constantly and the tenant had the old cartridge inside removed and a new one installed at a cost of \$218.40. A receipt for that repair has also been provided which the tenant claims as against the landlord.

The tenant further testified that the landlord is currently squatting in the studio on the residential property, which was not part of the tenancy agreement. The address for the landlord as stated on the tenancy agreement is in Saskatchewan. Further, the landlord is using hydro in that studio that the tenant pays for. A document entitled "BC Hydro Usage from May 8th – May 18th, 2012" was provided by the tenant which is a

spreadsheet the tenant created using the readings on the Smart Meter of the house. The document shows how the consumption changed during that time period depending on whether the landlord was using hydro or was not on the residential property. Also, due to the landlord's failure to pay previous hydro bills, BC Hydro has caused the tenant to pay a deposit in the amount of \$551.00. The tenant claims that amount from the landlord as well as \$465.00 for hydro consumption for the months of April, May and June, 2012. A copy of a hydro bill has also been provided in the amount of \$323.76 covering the period of April 12 to May 28, 2012.

The tenant provided a copy of a letter the tenant sent to the landlord which confirms conversations the parties had on May 13 and May 14, 2012 with respect to emergency repairs. The tenant also testified that the roof over the laundry room leaks and is in need of repair. The tenant had an estimate done and stated that the repair will cost \$1,100.00, although no proof of that estimate has been provided.

The tenant also provided photographs of the rental unit, which includes photographs of what the tenant testified are the belongings of the landlord scattered throughout the yard, as well as a bucket filled with water which the tenant testified is from the leak in the laundry room ceiling. The tenant claims \$350.00 for the removal of the landlord's debris from the yard of the rental unit, however no receipt or proof of that cost has been provided.

The tenant's bed is currently in the living room and the tenant cannot use the bedroom because of a strong odour of urine in the carpet. The tenant has provided an estimate to remove the old carpet and install laminate at a cost of \$500.00.

The tenant stated that the smell of crack cocaine is evident from the studio, and the landlord holds a band jam session and party in the studio every Thursday night. The tenant has children and does not want them to witness or be subjected to such disturbances caused by the landlord and the landlord's guests. The tenant requests an Order of Possession of the residential property.

The tenant also testified that due to the foreclosure proceedings, the tenant now pays rent directly to the bank, and during the course of the hearing, the tenant withdrew the application for an order allowing the tenant to reduce rent for repairs or services agreed upon but not provided.

The tenant claims \$400.00 for lodging, \$209.00 for replacing the locks to the rental unit, \$218.40 for repairing the tap in the bathtub, \$551.00 for the security deposit paid to BC Hydro, \$465.00 for hydro usage for the months of April, May and June, 2012, \$1,100.00 to repair the leaking roof, \$350.00 for removal of the landlord's debris in the yard of the

rental unit, and \$500.00 to replace the flooring in the bedroom. The tenant provided a Monetary Order Worksheet listing those amounts as well as \$1,000.00 for the “broken lease agreement.” The tenant also requests an Order of Possession of the rental unit and the property to which the tenancy agreement applies.

The tenant also requested, during the course of the hearing, that the Order of Possession include a police enforcement clause because a police officer advised that such an order is necessary for police involvement.

Analysis

I have reviewed the tenancy agreement and I find that the tenant is entitled to an Order of Possession of the rental unit and the property to which the tenancy agreement applies. The tenancy agreement contains no provision for any other person to reside in the rental unit or on the property. The rental unit is described on the tenancy agreement as a certain address, and I find that the tenant is entitled to occupy the entire property, including the studio. Further, the landlord has indicated on the tenancy agreement that the landlord’s address is an address in Saskatchewan, and the tenant had no reason to believe when entering into that agreement that the landlord would be residing in the studio or anywhere else on the property, or that anyone else would be residing on the property.

With respect to the tenant’s application for a monetary order against the landlord, the *Residential Tenancy Act* states that emergency repairs are repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property and are made for the purpose of repairing major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to a rental unit, the electrical systems, or, in prescribed circumstances, a rental unit or residential property. A tenant may have emergency repairs made only when needed and the tenant has made at least 2 attempts to telephone the landlord or a person designated by the landlord for emergency repairs, and that following those attempts the tenant has given the landlord reasonable time to make the repairs. In this case, I have no evidence before me that the tenant has made any requests to the landlord to have repairs made to the roof or flooring for the bedroom. Therefore, I find that the tenant has not satisfied the requirements for emergency repairs and is not entitled to a monetary order for those items. The tenant has satisfied me that the tenant has complied with the *Residential Tenancy Act* with respect to emergency repairs to the hot water running in the bathtub, and I find that the tenant has established a monetary claim in the amount of \$218.40.

I also find, however, that the landlord is responsible for making repairs, and I order the landlord to make the repairs to the roof and flooring in the bedroom. If the landlord fails to make those repairs by July 31, 2012, the tenant will be at liberty to make the repairs and deduct that amount from future rent payable.

The *Act* also states that a landlord must provide a tenant with new keys or other means that give access to the residential property. The tenant testified that the landlord did not have keys and told the tenant that it was the tenant's responsibility, which I find is contrary to the *Act*. Therefore, I find that the tenant has established a claim in the amount of \$209.00 for that repair.

With respect to the tenant's application for a monetary order in the amount of \$400.00 for lodging for 7 days due to having no hydro in the rental unit, the tenant has not provided any evidence of being out-of-pocket that amount of money. The tenancy agreement states that hydro is not included in the rent, and the tenant testified to providing BC Hydro with a copy of the tenancy agreement on April 20, 2012, but the landlord did not contact BC Hydro to inform the company that the house was tenanted. Therefore, I find that the tenant is entitled to 7 days of rent, or \$303.33.

I find that the tenant's application for recovery of the security deposit for hydro is not something recoverable by the dispute resolution process. The hydro bill is in the name of the tenant, and even if the security deposit was required due to the landlord's failure to keep the account current, BC Hydro will be returning the deposit to the person who paid it. In this case, if I were to order the landlord to reimburse the tenant for that deposit, the tenant would receive it again from BC Hydro at a later date.

However, I have examined the BC Hydro bill provided by the tenant and the spreadsheet and find that the claim by the tenant for the utility used by the landlord, contrary to the tenancy agreement is reasonable in the circumstances. I find that the tenant is entitled to a monetary order for the landlord's usage of hydro of 25% of the bill provided in the amount of \$337.65, for a total of \$84.41. I decline to order an amount for future bills not yet received by the tenant, however the tenant is at liberty to make a future claim once the bills are received up to the date that the landlord vacates the rental property.

With respect to the tenant's application for \$350.00 for removal of the landlord's debris from the yard of the rental unit, I have reviewed the photographs provided by the tenant, and I accept the undisputed testimony of the tenant that the landlord literally threw his belongings into the yard so the tenant could move in. The tenant has not provided any evidence of the cost associated with cleaning up the yard as a result of the landlord's

actions, however, I do think the tenant is entitled to nominal damages in the amount of \$100.00 for the landlord's breach of the *Act* and the tenancy agreement.

The *Act* also prohibits a landlord from unreasonably restricting access to the residential property by the tenant or a person permitted on the residential property by the tenant. I hereby order the landlord to comply with the *Act* by ceasing any restrictions on the tenant or the tenant's family or guests to the residential property.

With respect to the tenant's application for a police enforcement clause in the Order of Possession, the *Residential Tenancy Act* does not authorize me to make such an order. The tenant is at liberty to show the Order of Possession to any police officer, however, I have also enclosed a copy of a Landlord/Tenant Fact Sheet with this Decision to both parties. The Fact Sheet provides the parties with information respecting the enforcement of the Order of Possession.

In summary, I find that the tenant is entitled to an Order of Possession effective on 2 days notice. The tenant is also entitled to a monetary order in the amount of \$303.33 for the landlord's failure to ensure the rental unit had hydro, \$209.00 for locks and keys; \$218.40 for the bathtub tap repair, \$84.51 for hydro usage, \$100.00 in nominal damages for the landlord's failure to remove the landlord's debris from the rental property, and \$50.00 for recovery of the filing fee for the cost of this application, for a total of \$965.24 which may be deducted from a future month's rent payable or otherwise recovered. I further order the landlord to make the repairs described above by July 31, 2012 and if the landlord fails to do so, the tenant may make the repairs to the roof and the bedroom floor and deduct that amount from future rent payable. The tenant is also at liberty to make an application for further hydro usage as against the landlord once the bills are received, up to the date that the landlord vacates the rental property. I further order the landlord to comply with the *Act* and that the landlord allow access to and from the rental unit for the tenant and the tenant's guests.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the tenant on 2 days notice to the landlord.

The tenant's application for an order permitting the tenant to reduce rent for repairs, services or facilities agreed upon but not provided is hereby dismissed as withdrawn.

The tenant's application for an order that the landlord allow access to and from the rental unit for the tenant and the tenant's guests is hereby allowed, and I order the landlord to refrain from denying such access. If the landlord fails to comply with this

order, the tenant will be at liberty to make a further application for dispute resolution claiming a further monetary order against the landlord.

I further order the landlord to make repairs to the laundry room roof and the bedroom flooring by July 31, 2012, and if the landlord fails to do so, the tenant will be permitted to effect the repairs and deduct the cost from future rents payable.

I further order the landlord to comply with the *Residential Tenancy Act* and provide the tenant with the tenant's right to quiet enjoyment of the residential property, and to provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law and make the rental property suitable for occupation by a tenant.

I hereby grant a monetary order in favour of the tenant as against the landlord, pursuant to Section 67 of the *Residential Tenancy Act* in that amount of \$965.24. This amount may be deducted from a future month's rent payable or otherwise recovered.

This order is final and binding on the parties and may be enforced.

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 28, 2012.

Residential Tenancy Branch