



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC MND MNR MNSD MNDC FF
MT CNC MNDC OLC RP RR FF

Preliminary Issues

Upon review of both applications for dispute resolution and the Landlord's evidence it was confirmed that the Tenant's surname on the notice of dispute resolution hearing documents was misinterpreted and spelled incorrectly on the hearing documents.

Based on the aforementioned, I amended the style of cause on the Landlord's application to display the correct spelling of the Tenant's surname, in accordance with section 64 of the Act.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking to obtain Orders of Possession for unpaid rent or utilities and for cause and a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking the following:

- to be allowed more time to make her application to cancel a notice to end tenancy for cause,
- to cancel a notice to end tenancy for cause,
- to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement,
- to Order the Landlord to comply with the Act, regulation or tenancy agreement and to make repairs to the unit, site or property
- to allow the Tenant to reduce her rent for repairs, services or facilities agreed upon but not provided
- to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I

explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Tenant be granted more time to make her application to cancel a Notice to end tenancy?
2. Should the Landlord be granted an Order of Possession?
3. Should the Landlord be granted a Monetary Order?
4. Should the Tenant be granted a Monetary Order?
5. Is the Tenant vacating the unit?

Background and Evidence

The parties agreed they entered into a verbal tenancy agreement that began on September 16, 2011. Rent is payable on the first of each month in the amount of \$1,150.00 and on September 16, 2011 the Tenant paid \$550.00 as the security deposit plus \$550.00 as the pet deposit. No condition inspection report form was completed at move in.

The Tenant submitted evidence which included her written statement, photos, and copies of text messages.

The Landlord submitted evidence which included her written statement, a timeline, and copies of letters and notices of entry written to the Tenant from May 30, 2012 to September 11, 2012.

The Tenant confirmed receipt of the 1 Month Notice to end tenancy for cause on August 17, 2012 and filing of her application on September 11, 2012, to dispute the 1 Month Notice. The Tenant advised that she did not file her application sooner because she was looking for another place to live and then made her application when she realized she needed more time.

The Tenant stated that she is moving and will be out of the rental unit today, October 1, 2012.

The Landlord confirmed that August 2012 rent has been paid in full however there is \$1,150.00 outstanding for September 1, 2012. She would also like to claim October 2012 rent and damages to the rental unit.

The Tenant advised she is seeking monetary compensation for having to live with a damaged carpet, for two water leaks, and for having the gas fireplace turned off. She confirmed she did not bring these issues forward prior to her ending the tenancy because she had made the decision to live with the issues until she could find another place to live.

The parties agreed to meet at the rental unit October 1, 2012 at 8:00 p.m. to conduct the move out inspection.

Analysis

When a tenant is served a 1 Month Notice to end tenancy for cause they have 10 days from receipt of the Notice to make an application to dispute the Notice. Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the *Act* but only in exceptional circumstance.

In this case, the reasons given by the Tenant on why she did not apply within the prescribed timeframes does not constitute exceptional circumstances and so I decline to award the Tenant more time. The Tenant acknowledged that she was vacating the unit October 1, 2012.

Based on the foregoing, I award the Landlord an Order of Possession.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 26 of the Act stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement.

The evidence supports the Tenant has failed to pay the September 2012 rent yet she continued to occupy the rental unit for the entire month of September 2012, which is a breach of section 26 of the Act. Accordingly, I award the Landlord a monetary order in the amount of **\$1,150.00**.

The Landlord has sought compensation for loss of rent for October 2012; however the Landlord has a duty to mitigate her loss and attempt to re-rent the unit as soon as possible. Accordingly, I dismiss the claim for October 2012 rent, with leave to reapply.

The Landlord has filed seeking a monetary order for damages to the unit, site or property. Given that this tenancy is ending today and the move out condition report has not yet been completed, I find this request to be premature. Accordingly, I dismiss the Landlord's claim for damages, with leave to reapply.

The Landlord has primarily been successful with her application; therefore I award her recovery of the **\$50.00** filing fee.

The Tenant has filed for monetary compensation for having to deal with issues surrounding the carpet, the gas fireplace, and two water leaks, in the rental unit. She acknowledged that she made a decision not to seek assistance in dealing with these issues as she had decided to find another place to live.

Based on the aforementioned I find the Tenant did not take any steps to mitigate or minimize her loss and in fact she made a conscious decision to avoid the issues. Therefore, I find the Tenant has provided insufficient evidence to meet the test for damage or loss, as listed above and her claim for monetary compensation is dismissed.

The remaining items claimed for by the Tenant (to Order the Landlord to comply with the Act, regulation or tenancy agreement and to make repairs to the unit, site or property; and to allow the Tenant to reduce her rent for repairs, services or facilities agreed upon but not provided) all relate to issues that would be pertinent if this tenancy continued. As the tenancy is ending today, I find these claims to be moot and they are hereby dismissed, without leave to reapply.

The Tenant has not been successful with her application; therefore I find she must bear the burden of the cost to file her application.

I note that during the hearing the Tenant provided a new address for service however upon review of that address, as listed on the first page of this decision, I note that address does not exist.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

September 1, 2012 rent	\$1,150.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,200.00
LESS: Pet Deposit of \$550.00 + Interest 0.00	550.00
LESS: Security Deposit \$550.00 + Interest 0.00	<u>-550.00</u>
Offset amount due to the Landlord	<u>\$ 100.00</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **two (2) days upon service**. This Order is legally binding and must be served upon the Tenant.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$100.00**. This Order is legally binding and must be served upon the Tenant.

The Landlord's request for damages to the unit, site or property, and loss of rent are HEREBY DISMISSED, with leave to reapply.

The Tenant's application in its entirety is HEREBY DISMISSED, without leave to reapply.

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: October 01, 2012.

Residential Tenancy Branch