



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, MNDC, CNR, FF

Introduction

This Dispute Resolution hearing was convened to deal with applications from both the landlord and the tenant.

The tenant's application was to cancel a Ten Day Notice to End Tenancy for Unpaid Rent and monetary compensation for loss of services and facilities, loss of quiet enjoyment and moving costs for being forced to end the tenancy prematurely.

The landlord's application was seeking to end the tenancy for unpaid rent and the tenant's breach of the tenancy agreement. In addition, the landlord was seeking a monetary order for rental arrears and strata fines that had been imposed due to the tenant's failure to follow the strata bylaws.

Both the landlord and tenant were present and gave testimony in turn.

Preliminary Issue

The landlord's application had indicated that the reason for ending the tenancy, in addition to the unpaid rent, was also due to the fact that the tenant breached an agreement with the landlord. This would appear to indicate that the landlord was ending the tenancy for cause. However, no copy of a One Month Notice to End Tenancy for Cause was in evidence.

The landlord confirmed that no One Month Notice to End Tenancy for Cause was ever served on the tenant. The landlord testified that the conduct of the tenant was a concern, in that they received fines from the strata council, and the landlord did encourage the tenant to vacate. However, only a Ten Day Notice to End Tenancy for Unpaid Rent was ever served on the tenant.

Accordingly the portion of the landlord's application requesting that the tenancy be ended because the tenant had breached an agreement, was not a matter that could proceed as this would need to be based on a One Month Notice to End Tenancy for Cause. The landlord's application was amended to remove the "breach of the Act or agreement" allegation. The hearing proceeded on the matter of the landlord's request

to terminate the tenancy based only on the Ten Day Notice to End Tenancy for Unpaid Rent.

Issues to be Decided for the Tenant's Application

Is the tenant entitled to monetary compensation for damages under section 7 of the Act.?

Issues to be Decided for the Landlord's Application

Is the landlord is entitled to compensation for rent and damages or loss under section 7 of the Act?

Is the landlord is entitled to an Order of Possession based on the Ten Day Notice to End Tenancy for Unpaid Rent?

Background and Evidence Landlord's Application

The tenancy began on March 4, 2012. The rent was \$1,100.00 per month and no security deposit was ever paid.

The landlord testified that the tenant fell into arrears in October 2012 and a Ten Day Notice to End Tenancy for Unpaid Rent was served. Proof of service was in evidence. The landlord testified that the tenant did not vacate nor pay the arrears, and has since failed to pay rent for the month of November 2012. The landlord is seeking compensation of \$2,200.00 for unpaid rent.

The landlord testified that, despite being repeatedly warned about their conduct, the tenants also incurred \$700.00 in fines for their actions that were in violation of the strata bylaws. The landlord is seeking compensation for these fines.

Evidence was submitted in the form of written communications, confirming that the rent was still outstanding and that the strata had imposed fines. Photos were also submitted into evidence.

The tenant testified that they were never given a copy of the strata bylaws and that they had appealed some of the fines. The tenant countered that the landlord did not provide proof that any fines were ever paid.

The tenant did not deny that their rent for October 2012 and November 2012 remained unpaid. The tenant testified that the landlord had asked them to vacate and a verbal agreement was reached between them in which rent for October was waived so the tenant could relocate. However, according to the tenant, they were not successful in

finding another place to move to until November 12, 2012. The tenant testified that they have now vacated the unit as agreed.

With respect to the landlord's claim for compensation for the full month of November 2012, the tenant pointed out that, while they did over-hold beyond the effective date shown on the Ten Day Notice to End Tenancy for Unpaid Rent, they finally did move out in mid-November and should therefore only be held accountable for rent for a portion of November 2012.

Background and Evidence Tenant's Application

In regard to the tenant's monetary claim, the tenant testified that part of their claim was based on the fact that the tenant was deprived of the use of laundry facilities for approximately 3 months due to a broken washing machine. The tenant stated that despite ongoing discussions with the landlord, the machine was never fixed and they were forced to go to a laundromat. The tenant estimated the cost at \$300.00 per month.

The landlord acknowledged that the machine was not repaired, but stated that the tenant had not cooperated with him in his efforts to get the appliance fixed or replaced. The landlord disputed the amount being claimed for laundry and felt that the rent abatement being claimed by the tenant for laundry costs was inflated.

The tenant stated that they were also claiming a rent abatement of four days, for being bothered by the landlord's realtor and contractors, resulting in a loss of quiet enjoyment, as well as lost wages. In addition, the tenant is seeking compensation for the cost of moving, which the tenant set at \$395.00 for the truck and other expenditures in addition to that.

The landlord disputed the claim and took the position that compensation for moving should not exceed \$200.00.

Analysis – Landlord's Monetary Claim

Ten Day Notice

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement.

In this instance, I find that the tenant did not pay the rent for October when rent was due. I find that, even if the tenant mistakenly believed that there was a mutual agreement to waive rent for October, this question was put to rest by the fact that the landlord issued a Ten Day Notice to End Tenancy for Unpaid Rent on October 4, 2012.

I find that the tenant did not vacate by the end of October 2012, which likely would have been the intent of the landlord even if a verbal agreement to waive rent had been made.

In any case, section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if a) the term is not consistent with the Act or Regulations, b) the term is unconscionable, or c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

I find that the alleged agreement to waive the rent is not clear because the alleged agreement only consisted of verbal terms that are now being disputed. Accordingly, I find that I cannot accept nor enforce the alleged term waiving payment of rent for October 2012.

Therefore I find that the tenant owed rent of October 2012 and did not pay. Accordingly, I find that the Ten Day Notice to End Tenancy for Unpaid Rent was valid and , as such, cannot be cancelled. The tenant stated that they have already vacated in any case. However, the landlord is still seeking an official Order of Possession and is entitled to possession.

Based on the evidence, I find that, under the Act, the landlord is entitled to be paid rent for October 2012 in the amount of \$1,100.00.

I also find that the tenant continued to occupy the rental unit for a portion of the month of November 2012 and therefore the landlord is entitled to be compensated in the amount of \$650.00. The landlord is entitled to total compensation of \$1,750.00.

Strata Fines: Landlord's Claim

In regard to the landlord's claim for reimbursement for the fines imposed by the strata council, I find that, although the landlord's claim is based on alleged violations of the strata bylaws, a copy of the bylaws had never been provided to the tenant. Accordingly, based on the Act and the tenancy agreement, there is no provision permitting the landlord to demand payment of fines. Therefore I find no basis for awarding these damages and this portion of the landlord's claim must be dismissed.

Damages: Tenant's Application

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,

2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord.

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

However a service or facility, other than an essential or material one may be restricted or terminated provided that the landlord, (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In regard to the tenant's monetary claim, I accept that the tenant was deprived of the use of laundry facilities for approximately 3 months and I find that the tenant is entitled to compensation of \$50.00 per month for the loss of part of the laundry facilities, totaling \$150.00.

With respect to the rent abatement of four days, for being bothered by the landlord's realtor and contractors, I find that section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: (a) reasonable privacy; (b) freedom from unreasonable disturbance; (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*]; (d) use of common areas for reasonable and lawful purposes, free from significant interference. It is clear that the landlord was eager to ready the unit for showings and possible sale, and I accept that the tenants were subjected to a loss of quiet enjoyment for four days. The tenant is therefore entitled to be compensated \$144.00, which represents an abatement of the rent for that four-day period.

In regard to the cost of moving, I accept that the tenant and landlord engaged in some informal negotiations for the tenant to voluntarily vacate. Although I rejected the tenant's position that the terms of the their agreement included free rent for October 2012, I still find that the tenant's preparations to move out were based on a verbal notice to vacate from the landlord. I find that, for a termination of tenancy to be

compliant, it must be served in the approved form, even when it consists of a mutual agreement to end the tenancy. For this reason, I find that the tenant is entitled to be reimbursed for the cost of moving and I grant the tenant compensation in the amount of \$395.00.

I find that the tenant is entitled to total compensation of \$698.00 comprised of \$150.00 for the loss of use of the washing machine, \$144.00 rent abatement for loss of quiet enjoyment and \$395.00 moving costs.

In setting off the amount of landlord's entitlement of \$1,750.00 and the tenant's monetary entitlement for \$698.00, I find that this leaves a remainder of \$1,052.00 still owed to the landlord by the tenant.

I hereby issue a monetary order to the landlord in the amount of \$1,052.00. This order must be served on the tenant and, if necessary, may be enforced through an application to Small Claims Court.

I hereby issue an Order of Possession to the landlord effective 2 days after service. This order must be served on the tenant and may be enforced through BC Supreme Court if necessary.

Each party is responsible for their own costs of the application. The remainder of both the landlord's and the tenant's applications are dismissed without leave to reapply.

Conclusion

The landlord and the tenant are both partially successful in their respective monetary claims and the landlord was granted an Order of Possession.

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: November 19, 2012.

Residential Tenancy Branch