



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, MNR, OPR, MT, CNC, OLC, ERP, RP, LRE, RR, O, FF

Introduction

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

The landlord's application was seeking an Order of Possession based on the Ten Day Notice to End Tenancy for Unpaid Rent and a monetary order for unpaid cable costs and rental arrears of \$375.00, due on November 1, 2012.

The tenant's application was for the return of the security deposit under the Act, monetary compensation for damages, an order to cancel a One-Month Notice to End Tenancy for Cause, an order to force the landlord to comply with the Act, an order to compel the landlord to make repairs and emergency repairs, an order to force the landlord to provide services and facilities required by law, an order to suspend or set conditions on the landlord's right to enter the rental unit, an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, the cost of the application and "other".

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

Preliminary Matter

At the outset of the hearing the parties testified that the tenant had never been served with a One-Month Notice to End Tenancy for Cause. The tenant stated that they had amended their application to remove the request for an order to cancel a One-Month Notice to End Tenancy for Cause and to replace this request with a request for an order to cancel to dispute the Ten Day Notice to End Tenancy for Unpaid Rent. The amended application was not in evidence.

However, the amendment to the application was allowed because of what appeared to be a typographical error, and the tenant's request was changed to be a request to cancel the Ten Day Notice to End Tenancy for Unpaid Rent dated November 2, 2012 .

Issues to be Decided for the Landlord's Application

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

Is the landlord entitled to a monetary order for rental arrears and unpaid cable utilities under section 7 of the Act?

Issues to be Decided for the Tenant's Application

Is the tenant entitled to monetary compensation for damages?

Is the tenant entitled to an order to cancel the Ten Day Notice to End Tenancy for Unpaid Rent?

Is the tenant entitled to an order to force the landlord to comply with the Act?

Is the tenant entitled to an order to compel the landlord to make repairs and emergency repairs?

Is the tenant entitled to an order to force the landlord to provide services and facilities required by law?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence: Landlord's Application

The tenancy began in March 2011 with a previous landlord. The rent is \$750.00 per month and a security deposit of \$375.00 was paid. A copy of the tenancy agreement was in evidence and indicated that the rent includes cable services.

The landlord testified that the tenant and landlord made a verbal agreement for the tenant to pay for enhanced cable services, but the tenant still owed \$140.00 for this service, which is being sought by the landlord.

The landlord testified that the tenant failed to pay \$375.00 of the rent owed on November 1, 2012 and a Ten Day Notice to End Tenancy for Unpaid Rent was served on the tenant. The landlord testified that the tenant did not pay the arrears within 5 days to cancel the Notice, nor did the tenant vacate the unit. The landlord is seeking compensation for rent owed and an order of possession based on the Ten Day Notice to End Tenancy for Unpaid Rent.

The tenant disputed the landlord's claim for the cable costs of \$140.00 and pointed out that the tenancy agreement showed that cable was included. The tenant did acknowledge that they failed to pay \$375.00 rent due on November 1, 2012 and were in arrears when the Ten Day Notice to End Tenancy for Unpaid Rent was served.

Analysis: Landlord's Application

Based on the evidence, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by in person. The tenant has not paid the arrears and acknowledged this fact. Therefore I find that there is no basis under the Act to cancel the Notice I find that the landlord is entitled to an Order of Possession.

With respect to the landlord's monetary claim for the cost of cable, I find that the written tenancy agreement must prevail over any purported verbal agreement that subsequently occurred between the parties. I therefore find that the portion of the landlord's claim relating to the cable must be dismissed.

In regard to the rent owed, I find that the landlord has established a monetary claim for rent in the amount of \$375.00.

Background and Evidence: Tenant's Application

With respect to the portion of the tenant's application dealing with:

- an order to force the landlord to comply with the Act,
- an order to compel the landlord to make repairs and emergency repairs,
- an order to force the landlord to provide services and facilities required by law,
- an order to suspend or set conditions on the landlord's right to enter the rental unit,
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided,

I find that the above issues were rendered moot by the fact that the landlord will be granted an Order of Possession to terminate this tenancy. The tenant's claim for monetary compensation, however, must still be decided. The total monetary claim is for \$2,111.00, including the refund of the \$387.50 security deposit.

The tenant testified that the landlord commenced intensive renovations in January 2012 and the tenant was subjected to noise on a daily basis, for which the tenant is claiming 100% rent abatement during the month of January in the amount of \$750.00.

The landlord acknowledged that there was noise but did not agree with the amount of the claim and pointed out that the work was limited to between the hours of 9:00 or 10:00 a.m. and 6 p.m. The landlord valued the loss of quiet enjoyment for the tenant at \$100.00.

In addition to the above, the tenant is claiming compensation for loss of quiet enjoyment due to the landlord entering the unit at will, during the renovation work, without providing 24 hours written notice as required under the Act. The tenant is claiming compensation of \$200.00 for the intrusions.

The landlord acknowledged that they did enter the unit to do repairs, but testified that the co-tenant gave verbal permission for them to enter when they came to the door.

The tenant is claiming compensation of \$187.00 for the loss of use of one bedroom due to flood remediation.

The landlord did not dispute that the room was affected, but disagreed with the amount of compensation being claimed that represented a 100% rent abatement for that period. The landlord testified that the compensation should be prorated based on the total area.

The tenant testified that they were required to do part of the clean-up after the contractors completed the work and the tenant is seeking \$20.00 per hour for 3 hours.

The landlord disputed this claim on the basis that the contractors were paid to do the job including all of the clean-up.

The tenant is claiming \$327.00 for items that were allegedly ruined by water and mud infusion, including bedding, furnishings and carpets. The tenant stated that the carpets furniture and bedding could not be cleaned. According to the tenant the amount being claimed was based on the used value of these items.

The landlord disputed this claim and pointed out that the tenant had never gave the landlord any opportunity to see the alleged damage. The landlord stated that the claims are based solely on the tenant's report in the absence of receipts or other evidence which would confirm the extent of the damage, and the value of the items.

The tenant is seeking compensation for cable costs charged during the tenancy in the amount of \$200.00. Documentary evidence was submitted to confirm that payments for cable had been made to the landlord, despite cable being included as part of the tenancy in the rent as shown on the tenancy agreement.

Analysis – Tenant's Monetary Claim

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 tenant.

In regard to the claim for a rent abatement due to construction noise, I find that section 28 of the Act 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; (my emphasis)

(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.

In this instance, I find that there is no doubt that the tenancy lost some value during January 2012 and the tenant's right to quiet enjoyment under the Act was compromised.

I find that the construction noise was likely present for approximately 1/3 of the total day and that a rent abatement for that period was warranted in the amount of 50% of the rent. I find that the daily rent of \$24.56 divided by one third equals \$8.22 and that 50 percent of the rent charged for that duration is \$4.11. Presuming that the construction work went on for six days a week, I therefore find that the tenant is entitled to be compensated \$110.97 for enduring the noise for 8 hours of each of the 27 work days in January 2012.

With respect to the tenant's claim that the landlord violated the Act by entering the suite at will, I find that section 29 (1) of the Act states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of the entry, or not more than 30 days before the entry, or unless the landlord gives the tenant written notice at least 24 hours and not more than 30 days before the entry.

I accept the tenant's testimony that the landlord failed to provide 24 hours written notice to access the premises. However, I also accept the landlord's testimony that permission was granted by the co-tenant at the time of entry. I find that the tenant's claim for \$200.00 does not meet element 2 of the test for damage, because there was no violation of the Act by the landlord. I find that this portion of the tenant's application must be dismissed.

With respect to the claim for the loss of use of one bedroom for a week, I accept the testimony of both parties that this did occur. I find that the tenant must be compensated because the tenancy agreement included the use of the bedroom in question. With respect to the compensation, I find that the affected rental period of one-week constitutes $\frac{1}{4}$ of the month, or rent payable in the amount of \$187.50. I find that, during this period, the tenant was inconvenienced, but still had the use of the rest of the home. Therefore, I find that the tenant is only entitled to be compensated 25% of rent payable for the week in recognition of the missing bedroom, in the amount of \$46.88.

In regard to the tenant's claim for \$60.00 for three hours of cleaning after the contractors finished, I accept that some cleaning was likely necessary, given that the landlord could not provide first-hand testimony that she had personally inspected the job when the workers had finished. Accordingly, I find that the tenant is entitled to be compensated \$40.00 for two hours of cleaning.

With respect to the tenant's claim of \$327.00 for irreparably damaged possessions, I find that the claim does not adequately satisfy elements 1, 2, 3 or 4 of the test for damages and must be dismissed.

With respect to the costs of the cable, I have already found that the cable was included in the rent and I accept the tenant's evidence confirming that payments were made to the landlord for the enhanced cable. Accordingly, I find that the tenant is entitled to be reimbursed \$200.00 for the payments of cable over the tenancy.

In regard to the tenant's \$375.00 security deposit, I find that these funds are held in trust for the tenant and the tenant is always given credit for the deposit.

Based on the testimony and evidence I find that the tenant is entitled to total compensation of \$772.85 comprised of \$110.97 for loss of quiet enjoyment during January 2012, \$46.88 for the loss of one bedroom for a week, \$40.00 compensation for cleaning, \$200.00 for wrongfully collected cable charges and \$375.00 credit for the tenant's security deposit.

I also find that the landlord is entitled to total compensation of \$375.00 for rent owed for November 2012.

In setting off these two amounts, I find that the tenant is entitled to be granted a monetary order for the remainder in the amount of \$397.85.

I hereby grant a monetary order in favour of the tenant for \$397.85. This order is final and binding. It must be served on the Respondent and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court if unpaid.

I hereby grant an Order of Possession to the Landlord based on the Ten Day Notice to End Tenancy for Unpaid Rent, effective 2 days after service on the tenant. This order must be served on the tenant and may be enforced through an order from BC Supreme, if necessary.

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

Conclusion

The landlord is successful in being granted an Order of Possession.

Both the landlord and the tenant are partially successful in their monetary claims and after setting off the two amounts, the tenant is granted an order for \$397.85.

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*.

Residential Tenancy Branch