



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Condor Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPR, MND, MNR, MNSD, MNDC, FF
Tenant: CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy. The hearing was conducted via teleconference and was attended by the landlord's agents only.

Despite filing her own Application for Dispute Resolution to cancel a notice to end tenancy prior to the landlord's Application; having the hearing set as a result of the tenant's Application; and submitting evidence (listing the landlord's file number) to the Residential Tenancy Branch the day before the hearing, I find the tenant was sufficiently aware of the hearing; that it was for her Application and the landlord's Application and she still failed to attend.

While both parties had named agents for the landlord as the landlord in their Applications and the tenancy agreement uses a corporate name for the landlord, with the landlord's agents agreement I amend both Applications to reflect the corporate name of the landlord.

In addition to the landlord's Application Dispute Resolution seeking an order of possession, during the hearing the landlord verbally requested an order of possession should the tenant be unsuccessful in her Application for Dispute Resolution seeking to cancel the Notice to End Tenancy.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a Notice to End Tenancy, pursuant to Sections 46, 47, and 52 of the *Act*.

Background and Evidence

The landlord provided a copy a tenancy agreement signed by the parties on November 12, 2012 for a 1 year fixed term tenancy beginning on December 1, 2012 for a monthly rent of \$1,200.00 due on the 1st of each month. The landlord submitted that a later verbal agreement reduced the rent to \$1,170.00 per month due on the 15th of each month.

The landlord submitted that despite requiring a security deposit of \$600.00 and the landlord giving the tenant a 30 day extension to pay the deposit the tenant has not yet paid any money towards the security deposit. The landlord submits the tenant paid rent in December 2012 in the amount of \$1,100.00 and has not paid any rent since leaving arrears in the amount of \$2,410.00.

The landlord issued a Notice to End Tenancy dated January 20, 2013 with an effective vacancy date of January 30, 2013. In an email from the tenant to the landlord dated January 25, 2013, which the landlord entered into evidence, indicates that the tenant acknowledged receiving the Notice that the landlord had posted on the rental unit door.

The landlord also submits that the tenant caused flooding in the rental unit on two occasions since the start of the tenancy that resulted in the landlord having substantial costs for restoration services and replacement carpeting. The landlord submits the first occurrence was on December 15, 2012 when she let the tub overflow and then on January 15, 2013 a similar incident occurred. In both cases the flooding was discovered when water was entering the common area hallway and parking area.

The landlord submitted a copy of the bill for restoration services for total of \$2,885.24 but testified that he was able to negotiate these costs down to \$920.00. The landlord also provided a copy of his carpet replacement estimate confirming \$1,153.96 for carpets damaged due to flooding.

Analysis

In the absence of the applicant tenant, I dismiss her Application for Dispute Resolution seeking to cancel a Notice to End Tenancy for Unpaid Rent or Utilities.

Section 55(1) of the *Act* states if a tenant makes an Application for Dispute Resolution to dispute a landlord's notice to end tenancy, the director **must** grant an order of possession to the landlord if, the landlord makes an oral request for an order of possession and the director dismisses the tenant's Application.

As the landlord has verbally requested an order of possession should the tenant be unsuccessful in her Application and I have dismissed the tenant's Application I find the landlord is entitled to an order of possession in accordance with Section 55(1).

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(3) of the *Act* stipulates that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

From the undisputed testimony and submissions of the landlord I find the tenant caused damage to the rental unit by causing the bathtub to overflow on two occasions and that, pursuant to Section 32(3) the tenant is responsible for the repairs. I find the landlord has established the value of the losses incurred by the need for the repairs and that the landlord took extraordinary measures to mitigate the losses.

Conclusion

As noted above, I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$4,583.96** comprised of \$2,410.00 rent owed; \$2,073.96 repairs and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: February 22, 2013

Residential Tenancy Branch

