



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, MNR, MNSD

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy issued for unpaid rent, a monetary order request for money owed or compensation for damage or loss, for the cost of emergency repairs and the return of the security deposit.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have acknowledged receiving the notice of hearing package, I am satisfied that both parties have been properly served with the notice of hearing.

It was clarified with the Tenant that as the Tenancy has not yet ended that the monetary request for the return of the security deposit is premature and is dismissed with leave to reapply.

During the hearing the Landlord made it known that she wished for the tenancy to end and would like to have possession of the rental unit. I find that this constitutes a oral request for an order of possession.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

This Tenancy began on August 1, 2012 on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$1,300.00 payable on the 1st of each month and a security deposit of \$650.00 was paid.

Both parties agreed that the Tenant was served with a 10 day notice to end tenancy issued for unpaid rent dated February 17, 2013. The notice shows that rent of \$5,200.00 that was due on February 1, 2013. The stated effective date of the notice is February 27, 2013. The Landlord clarified that the rent due was for unpaid rent of the monthly rent of \$1,300.00 for December 2012, \$1,300.00 for January 2013, \$1,300.00 for February 2013 and \$1,300.00 for March of 2013. The Tenant confirmed in her direct testimony that a partial rent payment of \$800.00 was paid for December 2012 and that no rent was paid to the Landlord after that.

I find based upon the direct testimony of the Tenant that no rent was paid. I am satisfied that the Landlord has established a claim for an order of possession as the Tenant has stated in her direct testimony that no rent was paid and that there was no permission from the Landlord or that no order was granted allowing the Tenant to withhold rent. The Tenant's Application to cancel the notice dated February 17, 2013 is dismissed. The Landlord is granted an order of possession. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The Tenant has also made a monetary claim for \$4,000.00 for money owed or compensation regarding emergency repairs. This consists of \$1,620.00 for the repair of the garage and house roof leaks, \$851.19 for the replacement of a dishwasher, \$1,400.00 for the removal of ivy growing throughout the house and \$200.00 for bags and dump fees. The Landlord disputes these claims. The Tenant has provided copies of handwritten receipts from J.W. Enterprises dated December 12, 2012 for \$851.19, a handwritten receipt for \$1,620.00 from K.K. a licensed roofer who repaired the roof of the house and the garage. The Tenant has also provided copies of two Rona Revy receipts for \$230.26 and 365.43 for painting supplies. The Tenant has also provided copies of photographs of the rental. The Tenant states that she attempted to notify the Landlord of these emergency repairs when they occurred on December 6, 2012 and then later again by text. The Landlord disputes this stating that numerous text conversations were held on December 6, 2012 and later with no mention of any requests for emergency repairs. The Landlord has submitted copies of numerous text messages with the Tenant throughout the day confirming this.

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.

I find that there was insufficient evidence to satisfy me that reasonable attempts were made to notify the Landlord of any emergency repairs that were needed. The Tenant has also failed to provide sufficient evidence to the damage or loss and as well any sufficient evidence of an actual amount of loss for compensation. On these grounds, the Tenant's Application for a monetary claim are dismissed.

Conclusion

The Tenant's Application is dismissed.
The Landlord is 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: March 22, 2013

Residential Tenancy Branch

