



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, CNR, MNDC, ERP, RP, RR, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenant. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing. There was an earlier hearing on April 22, 2013; the hearing did not proceed because the parties had not served their applications. Both applications were dismissed with leave to reapply and this hearing was convened to hear the new applications. Since the applications were filed, the tenant has moved out of the rental unit. She is not disputing the Notice to End Tenancy and is pursuing only her claim for a monetary order. The landlord has possession of the rental unit and he is now claiming only a monetary order for unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the tenant entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is the main floor of a duplex in Burnaby. The tenancy began on June 1, 2012. The monthly rent was \$1,350.00. According to the landlord the tenant paid a \$675.00 security deposit at the start of the tenancy.

The tenant testified that she moved out at the end of April because she was being threatened and harassed by the landlord and the downstairs tenants and felt unsafe living in the rental unit.

The landlord claimed payment of rent for months of March, April and May, 2013. He said there was \$1,200.00 outstanding for March and \$1,350.00 for April and for May, for a total of \$3,900.00.

The tenant testified that when she moved into the rental unit on June 1st, 2012 the landlord did not have a tenancy agreement prepared. She paid a \$650.00 security deposit in cash.

The tenant said that the electrical system in the house was defective and the circuit breakers would trip whenever she plugged any appliance into an outlet. The tenant said the breakers were located in the downstairs suite and the downstairs occupants would not turn them back on when she asked them to do so.

The tenant complained that there was a lack of heat in the rental unit when the cold weather arrived. She said that although she asked repeatedly to have it fixed the landlord would not return her calls. She said the downstairs tenants controlled the heat and they would not turn it on. The tenant said that in late November, or early December there was an electrical fire in the rental property. The fire department told her that the landlord needed to make repairs, but repairs were never made.

The tenant complained that most of the electrical outlets in the rental unit did not work. She complained that there were six rental units in the house. The tenant said there was a missing light fixture in the hall with bare wires hanging down that the landlord would not repair despite the tenant's requests. She was concerned about the danger of a fire. The tenant said there were no smoke alarms. She bought and installed her own in the rental unit.

The tenant said she was harassed and threatened by the downstairs tenants and that the landlord initiated or instigated this harassing behaviour. The tenant said she was physically threatened. She said that the downstairs tenants work for the landlord and they have intimidated her and threatened her life; they threatened to blow up her car and blow up the house. She said they were arrested by the RCMP for uttering death threats. The police were called a number of times. The tenant also complained that the downstairs tenants smoked marijuana in their suite and would blow the smoke into the vents so it would travel into the tenant's rental unit.

The tenant said that when she had relatives visit in January the downstairs tenants made racist comments to them and attempted to assault them because they were using the laundry facilities to do the tenant's laundry. The tenant's relatives were so fearful of the downstairs tenant that they had to go stay in a shelter. The tenant also complained that her television cable was cut by the downstairs tenant and she said this this was confirmed by the cable provider.

The tenant said that she had no option but to move out due to the threats and harassment. She moved out in April. The tenant claimed that she should be entitled to a monetary award as compensation for the threats, harassment expenses and loss of quiet enjoyment. In her application she claimed payment of the sum of \$2,550.00, which amounted to a forgiveness of rent claimed by the landlord in the 10 day Notice to End Tenancy served on the tenant on April 6th.

The landlord testified that the tenant moved out without giving notice and that she failed to pay rent for March and April. He also claimed payment of May rent because of the absence of notice. The landlord denied the tenant's complaints of inappropriate conduct by the downstairs tenant. He claimed that the tenant was the source of conflict because she abused the laundry facilities and had too many people staying in the rental unit. He denied that there was any lack of heat in the rental unit.

Analysis

Although the evidence is contradictory, I heard direct evidence from the tenant about the ongoing problems at the rental unit, particularly about her problems with the downstairs tenants, who acted as the landlord's agents. I did not have direct evidence to contradict the tenant's testimony about the acrimonious and confrontational conduct of the downstairs occupants. I find that the tenant had sound reasons in April that justified her in moving out of the rental unit due to ongoing threats and harassment. I find that these occurrences constituted a material breach of the tenancy agreement and in particular of the tenant's right to quiet enjoyment, but the tenant was still obliged to give the landlord written notice and an opportunity to rectify the breaches. The tenant did not give the landlord written notice to say she was going to move out if the landlord did not promptly deal with the harassment and the other deficiencies in the rental unit and the tenant did not apply for to the Residential Tenancy Office for a repair order for any of the deficiencies in the rental unit, even though, according to the tenant, they dated back to the inception of the tenancy.

I find that the tenant was not entitled to move out without notice and without paying rent. I find that she is obliged to pay rent for March and April, but not for May. The tenant moved out before the end of April and the landlord has not submitted any documents to show what steps he took to re-rent the unit. I have found that the tenant is responsible for the rent for March and April, but I find that it should be a reduced rent because of the loss of quiet enjoyment that the tenant experienced due to a lack of amenities and due to the harassment by the downstairs occupants. I find that the landlord is entitled to an award of \$525.00 for March and \$675.00 for April for a total of \$1,200.00. I order that the landlord retain the security deposit of \$675.00 in partial satisfaction of this award

and I grant the landlord a monetary order for the balance of \$525.00. I make no order with respect to the recovery of filing fees because they were waived for each application. This monetary order may be registered in the Small Claims Court and 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: June 21, 2013

Residential Tenancy Branch