



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs and emergency repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that the landlord handed him a 10 Day Notice on June 2, 2013. The tenant testified that the landlord handed him a copy of the landlord's dispute resolution hearing package on June 29, 2013. The landlord confirmed that the tenant handed him a copy of the tenant's dispute resolution hearing package on August 21, 2013. I am satisfied that the parties served one another with the above documents in accordance with the *Act*. I am also satisfied that the tenant served the landlord with a copy of his written evidence package in accordance with the *Act*.

Preliminary Issue- Severance of Portion of the Tenant's Application

Section 2.3 of the Residential Tenancy Branch's (the RTB's) Rules of Procedure allows me to dismiss unrelated disputes contained in a single application with or without leave to reapply. In this case, I determined that many of the issues identified in the tenant's August 19, 2013 application for dispute resolution were unrelated to the central question as to whether this tenancy is to continue. I advised the parties that if I were to determine that the tenancy were to continue I would consider the tenant's request to issue orders regarding a series of issues regarding the tenancy (e.g., repairs, emergency repairs, requirement that the landlord comply with the *Act*, etc.). However, I advised the parties that the time allotted to this hearing would be best spent addressing the central question as to whether this tenancy should continue.

As I subsequently determined after hearing evidence from both parties that the tenancy was to end in accordance with the landlord's 10 Day Notice, I dismiss the tenant's application for orders requiring the landlord to conduct repairs, emergency repairs and to comply with the *Act* without leave to reapply.

I dismiss the tenant's application for a monetary Order for losses and damages arising out of this tenancy with leave to reapply.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent? Is the tenant entitled to any reduction in rent arising out of this tenancy for services and facilities not provided by the landlord? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Should any other orders be issued with respect to this tenancy?

Background and Evidence

The tenant first moved into this multi-tenanted rental property in January 2013, as an occupant in premises rented to another tenant. When that tenant vacated the premises, the landlord and the tenant signed a new Residential Tenancy Agreement (the Agreement) on February 2, 2013. According to the terms of the Agreement entered into written evidence, this periodic tenancy began on March 1, 2013. Monthly rent is set at \$450.00, payable in advance on the first of each month. The landlord is to provide utilities, including hydro to the tenant. The landlord continues to hold the tenant's \$225.00 security deposit paid on February 2, 2013.

The landlord gave undisputed sworn testimony that the last monthly rent that he received for this tenancy was in May 2013 from the Ministry of Social Development,

which was then paying rent on the tenant's behalf directly to the landlord. The landlord's original application for a monetary Order was for \$900.00 for unpaid rent for June and July 2013. Since he applied for dispute resolution, two additional months have passed without the landlord receiving any payments towards this tenancy. At the hearing, the landlord requested permission to increase the amount of his requested monetary Order to \$1,800.00, to reflect unpaid rent for August and September 2013. I agreed to allow the landlord to increase the amount of his requested monetary Order to \$1,800.00.

The tenant submitted written evidence to support his assertion that the landlord has failed to provide him with the services and facilities that the tenant expected to receive when he entered into the Agreement. He said that the landlord repeatedly assured him that he would conduct repairs to provide him with a secure door with a lock and a deadbolt, and windows. The tenant testified that there were open holes in the door and no door knob. When he moved into this rental unit, the tenant said that the window areas were covered over with cardboard to protect the rental unit from the cold weather. He said that he was unaware that there were no windows behind the cardboard.

The landlord denied that there were holes in the door or that the windows were broken when the tenancy began. He testified that a person who occupied the rental unit with the tenant broke the windows and caused considerable damage to the rental unit. The landlord gave undisputed sworn testimony that the tenant did not raise any specific requests for repairs until the landlord asked the tenant to remove the person who had been causing the damage to the rental property. The tenant confirmed that he did not send the landlord any emails requesting repairs until May when the landlord asked that the person causing the damage vacate the premises.

During the first month when the tenant refrained from paying his rent, the tenant provided the landlord with a lengthy list of deficiencies in this tenancy, each of which he maintained enabled him to reduce his monthly rent. The tenant stated that he would apply his monthly rent towards the repair of these deficiencies. He entered into written evidence a copy of May 22, 2013 bills for a deadbolt and a latch and doorknob which he installed. The landlord claimed that the tenant took the existing functional lock and doorknob from the door and replaced it with his own hardware.

The tenant maintained that the landlord's failure to respond to his monthly summary of the deductions he was planning to make from this rent signified his consent to the tenant's proposed repairs and allowances for deficiencies in this tenancy.

Analysis

Section 26(1) of the *Act* reads as follows:

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

In this case, the tenant does not dispute that he has not paid rent since May 2013. He alleged that the landlord interfered with the orderly provision of monthly rent cheques to the landlord by the Ministry by telling the Ministry that he did not want the tenant residing in this rental unit. The tenant said that he believed that the Ministry would still pay shelter allowance cheques to the landlord if the landlord were to confirm that the tenancy was continuing. He also asserted that the landlord's failure to provide him with the services and facilities he committed to provide at the beginning of this tenancy entitled the tenant to redirect his monthly rent to repairs and upgrades that the tenant believed were necessary.

At the hearing, I noted that the issue of whether or not the Ministry should have discontinued making direct shelter payments to the landlord on the tenant's behalf is not an issue before me nor can I consider the Ministry's actions in this regard. I noted that this is an issue for the tenant to pursue with the Ministry if he is concerned about the Ministry's actions. The Agreement is between the landlord and the tenant. The tenant is ultimately responsible for whether he pays rent in accordance with the Agreement or whether by refusing to pay rent, he is breach of the terms of the Agreement.

Section 26(1) of the *Act* does not empower a tenant to arbitrarily decide to withhold rent payments and to redirect these payments to those items of repair that the tenant considers necessary to continue his tenancy. While I may agree to a request from a tenant to reduce the tenant's rent for a portion of the months in question and to authorize the tenant's expenditure to purchase a functioning locking system for his door, this does not equate to retroactive authorization to withhold the tenant's entire rent for June or subsequent months.

After reviewing the evidence, I find that the tenant is entitled to recover the \$90.05 he spent on a new deadbolt, latch and doorknob, as I consider this a critical feature of the tenancy. Without such secure locking mechanisms, the tenant could not be assured of any sense of security. I also allow the tenant a rent reduction of \$50.00 per month for each of April and May 2013 as I find that the tenant has supplied sufficient evidence to demonstrate that the landlord did not provide the tenant with adequate security regarding the door to his rental premises for those two months.

I dismiss the remainder of the tenant's application for a monetary award for emergency repairs as there is insufficient evidence that any additional emergency repairs were undertaken by the tenant at his expense. In reaching this decision, I also note that there is disputed testimony as to how and when the windows were broken. The landlord said that this happened when a person living with the tenant broke these windows; the tenant said that this occurred before his tenancy began. Without any direct third party evidence, I find that the tenant has not established his entitlement to a reduction in rent for the landlord's failure to repair windows that may or may not have been broken by persons allowed into the premises by the tenant. I also note that there is also uncertainty as to whether or not the tenant exercised sufficient care in determining whether there were in fact glass windows in this rental unit before he signed the Agreement.

I find that the landlord's action in discontinuing his hydro account for this rental unit contravened section 27(1) of the *Act*, which reads in part as follows:

27 (1) *A landlord must not terminate or restrict a service or facility if*

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

The landlord did not dispute the tenant's claim that the landlord closed his hydro account because the tenant was not paying his monthly rent. The landlord noted that the tenant did not lose his hydro connection as the tenant paid to open his own hydro account. While I accept that the landlord undertook this change out of a sense of frustration, the *Act* does not allow a landlord to arbitrarily withdraw critical services that he committed to provide as part of his Agreement. At the hearing, the parties agreed that the average monthly hydro cost for this rental unit is approximately \$50.00. As there is undisputed sworn testimony and written evidence that the landlord closed his hydro account in July 2013, a service that was to be included in the tenant's monthly rent as per the Agreement, I reduce the monthly amount of the tenant's rent for July, August and September 2013 by \$50.00.

The tenant failed to pay the June 2013 rent in full within five days of receiving the 10 Day Notice. The tenant did not submit an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In his application for dispute resolution, submitted on August 19, 2013, more than two months after receiving the 10 Day Notice, the tenant did not request more time to apply to cancel the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these

actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by June 13, 2013. As that has not occurred and I find that there was unpaid rent owing from June 2013 that the tenant had no legal authority to withhold at that time, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the sworn testimony and written evidence, I find that the landlord is entitled to a monetary Order of \$450.00 for each of the four months from June 2013 until September 2013, with the exception of the reductions in rent allowed the tenant as set out above. I allow the landlord to retain the tenant's security deposit plus applicable interest to partially offset the amount of the monetary Order issued in the landlord's favour. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent less amounts reduced from that rent and to retain the tenant's security deposit.

Item	Amount
Unpaid June 2013 Rent	\$450.00
Unpaid July 2013 Rent	450.00
Unpaid August 2013 Rent	450.00
Unpaid September 2013 Rent	450.00
Less Reduction in Rent for April 2013	-50.00
Less Reduction in Rent for May 2013	-50.00
Less Allowance for Landlord's Withdrawal of Hydro Services to this Tenancy – July 2013	-50.00
Less Allowance for Landlord's Withdrawal of Hydro Services to this Tenancy – August 2013	-50.00

Less Allowance for Landlord's Withdrawal of Hydro Services to this Tenancy – September 2013	-50.00
Less Tenant's Costs to Purchase a Secure Locking System for his Door	-90.05
Less Security Deposit	-225.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,284.95

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the tenant's application for orders requiring the landlord to conduct repairs, emergency repairs and to comply with the *Act* without leave to reapply.

I dismiss the tenant's application for a monetary Order for losses and damages arising out of this tenancy with leave to reapply.

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: September 10, 2013

Residential Tenancy Branch

