



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GBMW PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Landlord: OPR, MNR, MNSD FF

Tenant: CNR, MNDC, MNSD, OPT, AAT, LAT, RR, FF, O

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed, pursuant to Section 67;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- An order to cancel the 10-Day Notice to End Tenancy for Unpaid Rent , pursuant to Section 46;
- A monetary order for damage or loss under the Act or agreement;
- Return of the tenant's security deposit;
- Obtain an Order of Possession for the tenant;
- An order to allow the tenant and guests access to (or from) the unit;
- An order to allow the tenant to reduce rent for repairs, services or facilities agreed-upon but not provided;
- Reimbursement for the cost of filing the application; and
- Other

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matters

Order of appearance to Present Testimony

At the start of the hearing, the parties were advised that I would first deal with the merits of the landlord's 10-Day Notice to End Tenancy for Unpaid Rent, as this matter would impact some of the other issues in these cross applications.

The tenant's application indicated that the tenant was disputing the 10-Day Notice to End Tenancy for Unpaid Rent and was requesting that it be cancelled, while the landlord had filed a cross application seeking an Order of Possession and monetary order based on the 10-Day Notice.

I initially attempted to follow the normal process by questioning the landlord to establish basic tenancy data, such as the start and end dates of the tenancy, the rental rate, details about service of the Notice, and the amount and date for the payment of the security deposit.

However, the tenant continually interrupted during this stage and expressed concern that I was ignoring her application. The tenant accused me of showing favoritism towards the landlord's application.

I explained the process to the tenant again and pointed out that I needed to gather this basic information to proceed with hearing each participant's claims.

I also informed the parties that I needed to hear the landlord's testimony about the reasons for serving the tenant with the 10-Day Notice to End Tenancy for Unpaid Rent first because the landlord bears the burden of proof to justify the Notice.

However, throughout this stage of the hearing process and for the entire duration, the tenant insisted on speaking over the other participants and the arbitrator giving verbose testimony about numerous events that occurred during the tenancy and expressing indignation over her treatment by this landlord. When asked to cease testifying and to wait until the appropriate time to give testimony, the tenant stated that I was clearly exhibiting a bias in favour of the

landlord. The tenant complained that the hearing was not being conducted properly and stated that she would take this matter to a higher authority.

However, despite the ongoing disruptions, the tenant was allowed a great deal of latitude during the proceedings to present all of her testimony, regardless of the fact that much of it had little relevance to the matters before me in the cross applications.

Amend Tenant's Application

At the outset of the hearing the tenant denied that, in her application, she had requested the 10-Day Notice to End Tenancy be cancelled. After some effort it was established that the tenant is no longer interested in disputing the landlord's 10-Day Notice to End Tenancy for Unpaid Rent.

The tenant testified that she has already vacated the rental unit since the end of August 2013, but was not able to return the keys due to a lack of cooperation by the landlord. The tenant stated that some of her personal possessions did remain in the rental unit during the first part of the month of September 2013.

Given the above, I find that some portions of the tenant's application, including the request for an order cancelling the 10-Day Notice to End Tenancy for Unpaid Rent, ; request for an Order of Possession for the tenant, an order to allow the tenant and guests access to (or from) the unit and an order allowing the tenant to change the locks are no longer moot and need not be heard.

The tenant stated that she agrees with granting the landlord an Order of Possession. The landlord will therefore be issued an Order of Possession effective two days after service on the tenant.

However, the tenant is still disputing the landlord's claim for rental arrears. The tenant is also seeking:

- A retro-active rent abatement for repairs, services or facilities agreed-upon but not provided;
- A monetary order for damages or loss under the Act or agreement;
- Reimbursement for the cost of filing the application and for a
- A refund of the tenant's security deposit.

The tenant's application is therefore amended to reflect the tenant's remaining claims as listed above.

Claim for Security Deposit

With respect to the return of the security deposit, I find that section 38 of the Act requires that, within 15 days after the tenancy ends and the landlord receives the tenant's forwarding address in writing, the landlord must either: a) repay the security deposit to the tenant with interest or; b) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In the case before me, the tenant has acknowledged that no forwarding address was ever provided to the landlord. Based on the Act, I find that the landlord is not obligated to refund a tenant's security deposit until the tenancy ends and the tenant also provides a forwarding address in writing where the funds can be sent.

I find that the tenant's application indicated that she was still residing at the dispute address on September 4, 2013 and no other address has ever been provided in writing to the landlord.

Therefore, I find that the portion of the tenant's application seeking a refund of the security deposit is premature.

Issue to be decided

The remaining Issues are:

- Is the landlord entitled to monetary compensation for rental arrears?
- Is the tenant entitled to monetary compensation in the form of a retro-active rent abatement for repairs, services or facilities agreed-upon but not provided?
- Is the tenant entitled to a monetary order for damages or loss under the Act or agreement?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The current tenancy started in April 2013 with rent set at \$750.00 per month, payable on the 1st day of each month. A security deposit of \$375.00 was paid.

Evidence was submitted by both parties, including a copy of the Ten Day Notice to End Tenancy for Unpaid Rent dated August 2, 2013, a copy of a 10-Day Notice to End Tenancy for Unpaid Rent dated September 12, 2013, a copy of the tenancy agreement and copies of communications.

The landlord testified that the tenant failed to pay \$750.00 rent owed for the months of August, 2013, September 2013 and October 2013 and accrued arrears totaling \$2,250.00, which is being claimed.

The tenant disputed the claim stating that the landlord had repeatedly refused the tenant's attempts to pay the rent for August 2013. The tenant testified that she moved out during the first week of September 2013 and therefore does not owe any rent beyond that date.

In regard to the tenant's application and monetary claims for compensation, the tenant submitted the following list of claims:

- \$350.00 for moving expenses and cleaning when the tenant moved in,
- \$375.00 damage/security deposit refund,
- \$3,000.00 rent abatement for loss of peaceful enjoyment, lack of repairs, restricted facilities, accessing the tenant's rental unit without proper notice under the Act, releasing the tenant's personal information and other violations of the Act,
- \$300.00 moving expenses to relocate, and
- \$50.00 filing fee paid for the application.

The tenant is seeking a Monetary Order of \$4,075.00. In support of the monetary claim, the tenant submitted a written statement and gave verbal testimony all of which was disputed by the landlord.

Analysis:

Landlord's Application

I find that section 26 of the Act states that rent must be paid when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

I find that the tenant resided in the rental unit during the months of August and part of September 2013, without paying the \$750.00 rent owed on August 1, 2013 and September 1, 2013 as required under the Act. Accordingly, I find that the landlord is entitled to monetary compensation from the tenant for unpaid rent in the amount of \$1,500.00.

As the tenant is not disputing the Order of Possession, the landlord is also granted an Order of Possession effective two days after service on the tenant.

Tenant's Application

With respect to the portion of the tenant's application pertaining to the claim for a refund of the tenant's security deposit, I find that this claim was made prematurely. At the time of the application, filed on September 4, 2013, the tenant was still residing in the rental unit and since moving out, has not yet provided the landlord with her forwarding address in writing.

In regard to the tenant's remaining monetary claims, I find that it is important to note that 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.

The tenant is seeking a retro-active rent abatement of 100% of all rent paid over the 5-month period, during which she resided in the rental unit. The tenant is also claiming all of her moving costs for moving-in and for moving-out of these premises.

In this instance, I find that the burden of proof is on the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual costs of the loss or damage.

Residential Tenancy Rules of Procedure, Rule 3.1, states that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed, or if that is not possible, at least (5) days before the dispute resolution proceeding.

In the case before me, I find that the tenant's application was made on September 4, 2013 and this hearing was scheduled for October 15, 2013.

I find that, during this period, the tenant failed to submit, and serve on the other party, sufficient relevant documents to support the monetary claims being made. I find that the tenant did not provide any witness statements, receipts for costs, photos, copies of communications relating to the various problems being alleged, nor anything except the tenant's testimony, which was challenged by the landlord.

Moreover, with respect to the tenant's claim for moving costs, I find that the tenancy was terminated due to unpaid rent and was not ended as a result of the landlord's alleged failures to comply with the Act.

Given the above, I find that the tenant has not satisfied all elements of the test for damages. I find that the tenant's monetary claim has no merit due to insufficient evidentiary proof and must therefore be dismissed.

Based on the evidence before me, I find that the landlord is entitled to total monetary compensation of \$1,550.00 comprised of \$750.00 unpaid rent for August 2013, \$750.00 unpaid rent for September 2013 and the cost of the application.

I order that the landlord retain the tenant's \$375.00 security deposit in partial satisfaction of the claim and hereby grant the landlord a monetary order for the remainder of \$1,175.00. This order must be served on the tenant and may be enforced through an order from Small Claims Court if not paid.

I hereby grant the landlord an Order of Possession effective two days after service upon the tenant. This order must be served on the tenant and may be enforced through the B.C. Supreme Court if necessary.

I hereby dismiss the tenant's monetary claim for moving costs and the retro-active rent abatement as the claims did not meet the test for damages due to insufficient evidentiary proof.

The rest of the issues put forth in the tenant's application are moot as the tenancy has ended.

Conclusion

The landlord is partially successful in their cross application and is granted a monetary order for rent and Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

The tenant is not successful in the application and it is dismissed in its entirety, without 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: October 15, 2013

Residential Tenancy Branch