



DECISION

Dispute Codes

OPR, CNR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution. With the consent of both parties the Landlord's Application for Dispute Resolution was amended to reflect the correct spelling of the Tenant's name.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent or should the Notice to End Tenancy for Unpaid Rent be set aside; is the Landlord entitled to a monetary Order for unpaid rent/lost revenue; and is the Landlord entitled to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 01, 2012; that the Tenant agreed to pay monthly rent of \$1,100.00 by the first day of each month; and that the Tenant has paid no rent for 2013. The Tenant submitted a copy of a tenancy agreement for this rental unit, which indicates she paid a security deposit of \$550.00.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on October 07, 2013, a copy of which was submitted in evidence by the Tenant. This Notice to End Tenancy declared that the Tenant owed \$11,000.00 in rent that was due on October 01, 2013 and had a declared effective date of October of 2013.

The Landlord and the Tenant agree that a copy of the aforementioned Ten Day Notice to End Tenancy for Unpaid Rent was mailed to the Tenant, a copy of which was submitted in evidence by the Landlord. The Agent for the Landlord stated that this Notice was mailed on October 23, 2013 and the Tenant acknowledged receiving that Notice in the mail. This Notice to End Tenancy is an exact duplicate of the Notice that was posted on October 07, 2013, with the exception that it has a declared effective date of October 20, 2013.

The Tenant stated that she did not pay her rent because there were a variety of deficiencies with the rental unit. She stated that she did not know that she had the right to file an Application for Dispute Resolution to apply for a rent reduction as a result of the alleged deficiencies or to apply for an order requiring the Landlord to repair the deficiencies. She was advised that she does have the right, in certain circumstances, to withhold rent if she has made emergency repairs to the rental unit.

The Tenant stated that there was a plumbing leak in the rental unit; that she informed the Landlord on more than two occasions about the leak; that the Landlord asked her to have the leak repaired; that a plumber quoted her \$900.00 for the repair; that she had a friend repair the plumbing in December of 2012; that she has not yet paid the friend, as she does not know how much she should pay the friend; that she paid \$120.00 for plumbing supplies for the repairs; that the Landlord would not agree to allow her to deduct the plumbing repair from her rent; and that she therefore did not provide him with a receipt until she served him with evidence for these proceedings.

The Landlord stated that the Tenant informed him the plumbing was leaking; that she told him a relative could repair the leak; and he did not agree to allow her to deduct the repairs from her rent as she did not provide him with any receipts for a plumbing repair until she served evidence for these proceedings.

The Tenant stated that she cleaned up the water after the plumbing leak; that she asked the Landlord to pay her for a labour, although she did not specify an amount; that the Landlord did not agree to pay her for her labour; and that she did not present the

Landlord with a bill for her labour. The Landlord stated that the Tenant did not ask for compensation for cleaning up the water.

The Landlord and the Tenant agree that the Tenant reported a problem with the furnace to the Landlord in October and/or November of 2012; that the Tenant paid \$89.95 to have the furnace serviced; that she showed the Landlord a receipt for the servicing; and the Landlord gave her permission to reduce her rent for December of 2012 by this amount.

The Tenant stated that she subsequently detected a gas leak; that she informed the Landlord of her concern; that the Landlord had the furnace inspected by a technician who told her there was nothing to worry about; that she subsequently paid \$168.00 to repair the furnace; that the Landlord would not agree to allow her to deduct this furnace repair from her rent; and that she therefore did not provide him with a receipt for the repair until she served him with evidence for these proceedings.

The Landlord stated that the Tenant informed him she had made additional repairs to the furnace but she did not provide him with a receipt for the additional repair until she served it as evidence for these proceedings.

The Tenant stated that in October of 2012 someone broke into the rental unit through the back door; that she informed the Landlord of the incident; that she replaced that lock; that in August of 2013 someone broke into the rental unit through the front door; that she informed the Landlord of the incident; that she replaced that lock; and that she did not provide the Landlord with copies of the receipts for the locks until she served him with evidence for these proceedings.

The Landlord stated that the Tenant informed him that the rental unit had been broken into the rental unit; that he told her she could replace the locks; and that she did not provide him with receipts for the repairs until she served it as evidence for these proceedings.

Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,100.00 by the first day of each month and that no rent was paid for the period between January 01, 2013 and November 30, 2013. As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$12,100.00 in outstanding rent to the Landlord.

A landlord has the right to end a tenancy for unpaid rent, pursuant to section 46 of the *Act*, by serving proper notice to the tenant. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy was posted on the door of the rental unit on October 07, 2013. I find that this Notice was not effective as it did not declare a precise effective date, as is required by section 52 of the *Act*. On the basis of the undisputed

evidence, I find that a Ten Day Notice to End Tenancy was mailed to the Tenant on October 23, 2013. I find that this Notice was effective as it did provide a precise effective date of the Notice. As the Landlord has the right to end this tenancy pursuant to section 46 of the *Act* and that Tenant has been served with proper notice to end this tenancy, I dismiss the Tenant's application to set aside the Notice to End Tenancy.

Section 90 of the *Act* stipulates that a document that is served by mail is deemed to be received on the fifth day after it is mailed. I therefore find that the Tenant is deemed to have received the effective Notice to End Tenancy on October 28, 2013.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on October 28, 2013, I find that the earliest effective date of the Notice was November 07, 2013.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was November 07, 2013. As the Tenant has been served with a Notice to End Tenancy that required her to vacate the rental by November 07, 2013 and she has not yet vacated the rental unit, I grant the Landlord's application for an Order of Possession.

Section 33(1) of the *Act* authorizes a tenant to make emergency repairs if the repairs are needed; if the tenant has made at least two attempts to notify the landlord of the problem, and if the tenant has given the landlord reasonable time to make the repairs. On the basis of the undisputed evidence, I find that the Tenant had the right to repair the plumbing problem in the rental unit.

Section 33(5)(a) of the *Act* stipulates that a landlord must reimburse a tenant for emergency repairs if the tenant claims reimbursement. On the basis of the undisputed evidence, I accept that the Tenant asked the Landlord for reimbursement for repairing a plumbing leak.

Section 33(5)(b) of the *Act* stipulates that a landlord must reimburse a tenant for emergency repairs if the tenant gives the landlord a written account of the emergency repair and a receipt for each amount claimed. I find that the Tenant has not yet provided the Landlord with a written account of the emergency plumbing repair. Although the Tenant has provided the Landlord with a large number of receipts, the receipts do not clearly indicate they are for plumbing supplies and I do not find that the Tenant can rely on the receipts to serve as a written account of a plumbing repair. I therefore find that the Tenant does not have the right to deduct the cost of the plumbing repair from rent owing.

I find that the Tenant has submitted insufficient evidence to show that she asked the Landlord to reimburse her for cleaning up after the plumbing leaked. In reaching this

conclusion, I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that she asked for compensation or that refutes the Landlord's testimony that she did not ask for compensation. On the basis of the undisputed evidence, I find that the Tenant did not provide the Landlord with an invoice for this labour nor did she provide him with a written account of the repair. As the Tenant has failed to establish that she asked for reimbursement and there is no evidence that she provided the Landlord with a written account or an invoice for the repair, I find that the Tenant does not have the right to deduct the cost of the cleanup from rent owing.

On the basis of the undisputed evidence, I find that the Tenant has not yet provided the Landlord with a written account of the furnace repair. Although the Tenant has provided the Landlord with a receipt for the repair, section 33(5)(b) of the *Act* also requires that she provide a written account of the repair. As a written account has not yet been provided, the Tenant does not have the right to deduct the cost of the furnace repair from rent owing.

On the basis of the undisputed evidence, I find that the Tenant has not yet provided the Landlord with a written account of the need to change the locks. Although the Tenant has provided the Landlord with a receipt for the repairs, section 33(5)(b) of the *Act* also requires that she provide a written account of the repair. As a written account has not yet been provided, the Tenant does not have the right to deduct the cost of the replacing the locks from rent owing.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$12,200.00, which is comprised of \$12,100.00 in unpaid rent and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$550.00 in partial satisfaction of the monetary claim. Based on these determinations I grant the Landlord a monetary Order for the balance of \$11,650.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In an effort to provide some clarity and finality to this tenancy, the Landlord is encouraged to agree to deduct the cost of these emergency repairs from the monetary

Order if the Tenant presents the Landlord with a clear written account of these repairs which is accompanied by receipts that clearly show the repairs were made.

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: November 21, 2013

Residential Tenancy Branch

