



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – OPR, MNR, MNSD, MNDC, FF

For the tenant – MNDC, OLC, RP, LRE, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*; for an Order for the landlord to make repairs to the unit, site or property; to suspend or set conditions on the landlords right to enter the rental unit; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had concluded; although only additional evidence from the landlord was received. All evidence and testimony of the parties has been reviewed and are considered in this decision.

.Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?
- Is the tenant entitled to an Order for the landlord to make repairs?
- Is the tenant entitled to an Order to suspend or set conditions on the landlord's right to enter the unit?

Background and Evidence

The parties agree that this tenancy started on January 15, 2014 for a fixed term of one year. Rent for this unit was agreed at \$1,600.00 per month due on the 1st of each month. The tenant paid a security deposit of \$800.00 on January 22, 2014.

The landlord's application

The landlord testifies that the tenants first rent and security deposit cheques were returned NSF. The tenant later paid these amounts for January, 2014 in cash. The tenant's rent cheque for February, 2014 was also returned NSF on February 20, 2014. A copy of this has been provided in the landlord's evidence. The landlord testifies that the tenant failed to make a rent payment for February and on February 21, 2014 the tenant was served with a 10 Day Notice to End Tenancy by posting a copy of the Notice to the tenant's door. The landlord has provided a proof of service document witnessed by the landlord's father and photographic evidence showing the 10 Day Notice on the tenant's door.

The 10 Day Notice informs the tenant that she has five days to either pay the rent or dispute the Notice by filing an application for Dispute Resolution or the tenancy will end on March 06, 2014. The landlord testifies that since service of this Notice the tenant has also failed to pay rent for March and April, 2014. The total amount of outstanding rent is now \$4,800.00. The landlord seeks an Order to keep the security deposit to offset against the unpaid rent.

The landlord testifies that the utility bills are in the landlords name but are sent to the rental unit. The first utility bill was not passed on to the landlord so the landlord contacted BC Hydro and paid the amount due for the first 15 days of the tenancy of \$33.04. The landlord testifies that another utility bill is due for an unknown amount but has not yet been received by the landlord. The landlord was unable to provide a copy of these utility bill's to the tenant at this time.

The landlord seeks a Monetary Order for the unpaid rent less the security deposit and the filing fee of \$50.00. The landlord also seeks an Order of Possession effective as soon as possible.

The tenant disputes the landlords claim. The tenant testifies that she did not receive a 10 Day Notice and disputes that there is outstanding rent for February and March. The tenant testifies that she paid cash to the landlord of \$1,600.00 on February 5th or 6th in the presence of the tenant's brother. The tenant testifies that she paid rent for March by cheque and placed it in the landlord's mail slot. The tenant testifies that her bank statements show that this rent cheque was cashed and states that she will provide a copy of her bank statement as additional evidence after the hearing has ended. No evidence was received by the tenant showing rent was paid for February or March after the hearing had concluded. The tenant agrees that rent for April has not been paid.

The landlord disputes the tenant's claims and testifies that no rent payment in cash has been made for February and no rent cheque has been received or cashed by the landlord for March. The landlord refers to a written statement made by the tenant

provided in evidence in which the tenant stated she had paid rent for March in cash and now the tenant states it was paid by cheque.

The tenant's application

The tenant testifies that when she moved into the unit it was not clean. The tenant testifies that she had to clean the unit and purchased cleaning supplies to do this work. The tenant seeks to recover the amount of \$300.00 for her time and the cleaning supplies.

The tenant testifies that there were things in the unit that needed to be repaired. The shower door glass was hanging out; however, the tenant's brother was able to repair this. The bottom panel of the dishwasher was broken and the bottom panel of the stove was broken. The locks on the bedroom door were unnecessary, the wall was damaged in the bedroom and the lock on the exterior door did not work properly. The tenant seeks an Order for the landlord to comply with the *Act* with regards to the cleaning and repair of the unit.

The tenant testifies that the landlord came to the unit and accused the tenant of changing the locks because the landlord's key did not work. The tenant voices her strong objection to this accusation. The tenant agrees the landlord did change the lock and give the tenant a key.

The tenant seeks an Order for the landlord to make repairs to the unit. The tenant testifies that she wrote down what repairs were required and provided this to the landlord. The landlord was given access to look at the repairs and said they would come back and make the repairs.

The tenant seeks an Order to suspend or set conditions on the landlord's right to enter the unit. The tenant testifies that the landlord would keep coming to the unit as if it was her own home. The tenant agrees the landlord did post a Notice to enter the unit and agrees she did let the landlord come into the unit. However the tenant testifies that the

landlord's father must have come to the unit when the tenant was not there to change the locks.

The landlord disputes the tenants claim. The landlord testifies that they only received written documentation about some repairs required when they got the tenant's evidence package. The landlord testifies that the tenant had verbally told the landlord that the dishwasher and stove panels, the shower door and the bedroom wall needed repair on January 22, 2014 but there was no mention of any problems with the locks.

The landlord testifies that when she went to the unit on March 11, 2014 after Notice was given for an inspection, the landlord asked the tenant what was wrong with the locks. The tenant's response was "to look for myself" however the landlord testifies that the locks looked fine. The landlord testifies that when she tried her key in the lock it did not work and the landlord therefore made the assumption that the tenant had changed the locks. The tenant was given Notice of Entry by the landlord to come and get a key for the new lock from the tenant however the tenant did not provide a key so the landlord changed the lock and gave the tenant a key. The landlord testifies that during this time the landlord also requested to look at the dishwasher and other repairs the tenant had requested. However, the tenant refused to allow the landlord to do so as the Notice of Entry had only been to change the lock.

The landlord testifies that they have never entered the unit without posting a Notice to the door. The landlord testifies that the tenant has always been in the unit when the landlord has entered. The landlord testifies that the tenant did not inform the landlord that cleaning was required and the landlord disputes that this was the case as the unit had been empty for a few months but had been professionally cleaned by the previous tenants. The unit was listed for sale during the period it was empty and was cleaned before each viewing prior to the tenant moving in.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regards to the landlords claim that the tenant failed to pay rent for February, March and April. I refer the parties to s. 26 of the *Act* which states:

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.

The tenant has testified that rent was paid in cash for February and by cheque for March which was cashed by the landlord. The tenant was given the opportunity to provide corroborating evidence to support this claim as it was disputed by the landlord. The burden of proof lies with the tenant to show that the amount of \$1,600.00 was paid for February and March. In the absence of any corroborating evidence I am satisfied from the landlord's evidence and testimony before me that there is outstanding rent for February, March and April, 2014 to the amount of **\$4,800.00**.

With regards to the landlords claim for unpaid utilities, as the landlord has not yet received the utility bills. I am unable to deal with this section of the landlords claim for an unknown amount. The landlord is however at liberty to reapply for unpaid utilities once the bills have been received and a written demand for payment within 30 days has been provided to the tenant and if the utilities then remain unpaid.

I Order the landlord to keep the security deposit of **\$800.00** pursuant to s. 38(4)(b) of the *Act*, in partial satisfaction of the landlords monetary claim. I further find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Unpaid rent for February, March, April, 2014	\$4,800.00
Filing fee	\$50.00
Less security deposit	(-\$800.00)
Total amount due to the landlord	\$4,050.00

I am satisfied from the evidence before me that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice was posted on the tenant's door on February 21, 2014 and is therefore deemed to have been served three days later on February 25, 2014. The Notice had an effective date of March 06, 2014 however this date is amended to March 07, 2014 pursuant to s. 53 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an Order of Possession pursuant to s. 55 of the *Act*.

With regards to the tenants claim for a Monetary Order for \$300.00; the tenant seeks to recover this sum for cleaning the unit and to recoup the cost of cleaning supplies. In this matter the tenant has the burden of proof to show that the unit was not clean at the start of the tenancy and to show the actual cost of any cleaning supplies purchased. The landlord disputes the tenants claim that the unit was not clean. When one persons testimony contradicts that of the other then the tenant would be required to provide corroborating evidence to meet the burden of proof. In the absence of any corroborating evidence from the tenant such as photographic evidence or receipts for cleaning supplies, I find the tenant has not met the burden of proof and the tenants claim is therefore dismissed.

With regards to the reminder of the tenants claim; as this tenancy will end and due to insufficient evidence from the tenant to support her claim, I find the reminder of the tenants claim for an Order for the landlord to comply with the *Act*, for an Order for the landlord to make repairs; and to suspend or set conditions on the landlords right to enter the rental unit are dismissed.

As the tenant has been unsuccessful with her claim I find the tenant must bear the cost of filing her own application.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,050.00**. The Order must be served on the tenant. Should the tenant fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two (2) days after service on the tenant**. This Order must be served on the tenant. If the tenant fails to comply with this Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's application 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: April 24, 2014

Residential Tenancy Branch

