



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: CNR CNC OLC RP LRE LAT

Landlord: OPR OPB OPC MND MNR MNDC MNSD FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution. **The tenant** filed on May 05, 2014 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. To cancel a Notice to End given by the landlord- Section 46 / 47
2. An Order for the landlord to comply with the Act - Section 62
3. An Order for the landlord to make repairs- Section 62
4. An Order making the landlord's right under the Act, to enter the rental unit, conditional – Section 70
5. An Order authorizing the tenant to change locks – Section 70

The tenant orally amended their claim seeking solely items 2 and 4.

The landlord filed on June 04, 2014 for Orders as follows;

1. An Order of Possession – section 55
2. A Monetary Order for unpaid rent- Section 67
3. A Monetary Order for damages to the unit
4. A Monetary Order for money owed or compensation for damage or loss - Section 67
5. An Order to retain the security deposit – Section 38
6. An Order to recover the filing fee for this application - Section 72.

The landlord orally amended their claim seeking solely items 1, 2, 4, 5 and 6.

Both parties attended the hearing and were given an opportunity to discuss their dispute, present *relevant* evidence, and make *relevant* submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present. The parties each acknowledged receiving all the evidence

of the other. The tenant acknowledged they had not submitted any document evidence. The parties were apprised that despite the submitted evidence only *relevant* evidence would be considered in the Decision.

Preliminary matters

The landlord sought to withdraw their claim for damages to the rental unit as their claim was premature given the tenancy is not at an end. As the request does not prejudice the tenant, the landlord's request was found reasonable given the tenancy is not at an end and the parties have not conducted a mutual move out condition inspection. The landlord's request was granted; with the effect the landlord may make an application for damages in the future within the time parameters to do so under the Act.

The tenant sought to adjourn the hearing because they had not been provided sufficient time to submit their evidence. As the tenant filed their application over 7 weeks ago and it was determined the tenant had sufficient time to submit any relevant evidence, their request was denied.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Should the landlord be Order to comply with the Act?

Should the landlord's right under the Act to enter the rental unit be made conditional?

Each party bears the burden of proving their respective claims.

Background and Evidence

The tenancy of this matter currently continues. The undisputed evidence of the parties in this matter is that the tenancy started July 15, 2013 as a written tenancy agreement with an effective end date of January 15, 2014. The hearing had benefit of the written Tenancy Agreement, which by agreement was permitted to continue beyond the length of the tenancy. Rent in the amount of \$1100.00 is payable in advance on the first day of each month. At the outset of the original tenancy the landlord collected a security deposit in the amount of \$550.00 which the landlord holds in trust. The tenant failed to pay rent in the month of May 2014 and on May 02, 2014 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant has further failed to pay rent in the month of June 2014. It is further undisputed that the tenancy agreement contains an addendum of terms and that the hearing was provided a copy of the tenancy agreement.

Tenant's application

The tenant does not dispute the landlord's claims respecting unpaid rent and is currently seeking alternate accommodations, with a view to vacate as soon as possible. They solely seek for the landlord's right, under the Act, to enter the rental unit, be made conditional until the time they vacate, as the landlord has been intrusive on the tenant's right to quiet enjoyment of the rental unit. The landlord disagrees with the tenant's assertions and stated they are aware of the parameters of their right to enter the unit.

Landlord's application

The landlord provided evidence they served the tenant with a 10 Day Notice to End Tenancy for Unpaid rent, respecting their claim for an Order of Possession and unpaid rent for May and June 2014. The landlord also sought loss of revenue for the first half of July 2014, which was preliminarily dismissed as premature, with leave to reapply.

The landlord sought to recover the cost of a shower curtain in the amount of \$20.00. The tenant acknowledged the shower curtain was damaged and agreed to compensate the landlord.

The landlord also sought compensation for their cost of *lawn/grass cutting*. The landlord provided that the tenancy agreement addendum obligated the tenant to - 12. "cut grass and weed". The tenant acknowledged that no grass cutting was performed by the tenant in 2013, and that the grass was cut on 1 occasion in February 2014. The landlord provided a series of receipts for lawn cutting, lawn maintenance, lawn care, fertilization, weed control and leaf raking and removal for 2013 and 2014. The landlord provided evidence that they reminded the tenant to cut the grass, and the landlord testified they paid to have the lawn cut in August, September and November 2013, as well as in March, April, May and June 2014. The landlord testified they utilized the standard of *the grass being higher than the neighbours'* in determining when the grass required cutting. The landlord claimed that the local government also looks for compliance with a by-law respecting the height of one's grass, although the landlord did not provide the by-law particulars as evidence.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.rto.gov.bc.ca.

The onus is on the respective parties to prove their claims, on balance of probabilities. On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

Tenant's claim

I find the tenant did not advance sufficient evidence to support their claim that the landlord's right to enter the rental unit should be made conditional. As a result, I **dismiss** the tenant's application in this respect, and I decline to Order the landlord to comply with the Act. *However*, it must be noted that in light of the tenant's pending departure from the rental unit, the parties are cautioned that for the duration of the tenancy the landlord's right to enter the rental unit is strictly guided by the Act, and that they may only exercise this right in strict compliance with the Act. Should the landlord take liberties beyond the prescribed conditions in the Act, the tenant may apply for dispute resolution, seeking compensation for the landlord's breach of the Act.

Landlord's claim

Under the *Act*, a party claiming a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

In relevance to this matter, the test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the tenant)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof that the claimant (landlord) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss.*

I accept the parties' testimony respecting the damaged shower curtain and I grant the landlord **\$20.00** in this regard.

I accept the parties' testimony and the landlord's evidence respecting the requirement for grass cutting. In this matter, I have not been provided sufficient evidence to support all of the landlord's costs for "cut(ting) grass and weed(ing)"; and, I do not accept the landlord's claim that the tenant is responsible beyond the requirement to, "cut grass and weed". None the less, I find that a reasonable and nominal standard for grass cutting is once per month. The landlord provided evidence that they paid \$40.00 for each cutting and trim. As a result, I grant the landlord \$40.00 for each of the months in which the landlord paid for lawn cutting: August, September and November 2013, and March, April, May and June 2014, in the aggregate of **\$280.00**, without leave to reapply.

Based on the evidence I find that the tenant was served with a Notice to End Tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent and did not provide proof they were authorized to withhold the payment of rent. Based on the above facts I find that the landlord is entitled to an **Order of Possession**.

I also find that the landlord has established a monetary claim for unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. The security deposit of this tenancy will be off-set from the award made herein.

Calculation for Monetary Order

rent arrears for May and June 2014	\$2200.00
shower curtain	20.00
grass / lawn cutting to June 30, 2014	280.00
filing fee for the cost of this application	50.00
<i>less Security Deposit held in trust</i>	<i>-550.00</i>
Total Monetary Award to landlord	\$2000.00

Conclusion

The tenant's application is **dismissed**.

I grant an Order of Possession to the landlord **effective 2 days from the day it is served on the tenant**. The tenant must be served with this **Order of Possession**. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I Order that the landlord retain the security deposit of \$550.00 in partial satisfaction of the claim and **I grant** the landlord an Order under Section 67 of the Act for the balance

due of **\$2000.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 24, 2014

Residential Tenancy Branch

