



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC CNC AAT LAT RR MNDC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to sections 46 or 47 and 55;
- b) A Monetary Order for unpaid rent and utilities; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) To cancel Notices to End Tenancy for unpaid rent and for cause;
- e) A monetary order or rent rebate of \$25,000 as compensation for repairs to the property and the disturbance of their peaceful enjoyment by the landlord; and
- f) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notices to End Tenancy, one for cause dated June 1, 2014 and the other a ten day for unpaid rent dated May 13, 2014, and of each other's Application for Dispute Resolution, although the tenant complained of the manner of the courier who delivered documents to her. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent is owed and/or that the tenant is repeatedly late paying rent so they are entitled to an Order of Possession pursuant to sections 46 or 47 and 55. Are they entitled to a monetary order for rental arrears and to recover the filing fee for this application?

Or is the tenant entitled to relief? Have they proved on the balance of probabilities that they are entitled to compensation for emergency repairs and for other matters and to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in November 26, 2009 when the landlord purchased the home from the tenant. Initially there was a one year lease but after that, it was a month to month. At first rent was \$1400 a month, then lowered to \$1200 and there was no security deposit.

The landlord elected to proceed first on the one month notice to end tenancy for cause. She said the tenant was always late in paying rent and her behaviour was also interfering with other tenants. She provided no objective evidence of rental payment history and she did not communicate specific dates of when the tenant was late in paying rent. She said she had evidence of receipts and other evidence but had not sent it in for the hearing.

The tenant denied she was late in paying rent. She said she paid on time although she had serious medical and other issues that made it difficult. She said she had an emergency repair when a hot water line burst and caused a flood and the landlord did not respond after many days. She sent in no objective evidence concerning the emergency repair such as costs and proof of payment, she had submitted no evidence concerning her further claims totalling \$25,000. She said she attended the Residential Tenancy Branch office yesterday to request an adjournment as she had not submitted evidence. In evidence is the Notice to End Tenancy for cause but none for the unpaid rent. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession and Monetary Order:

The onus is on each applicant to prove on a balance of probabilities their claim. I find both parties had insufficient evidence to satisfy the onus. I find that the tenant denied the claims of the landlord regarding unpaid rent and other causes to end the tenancy. The landlord did not submit any ledgers, accounting records or receipt books to support their claim for unpaid rent and did not submit any evidence concerning other causes. In the absence of any records that a competent, businesslike landlord would be expected to maintain and in the absence of other evidence to support the Notice to End Tenancy for Cause, I dismiss the landlord's claim and give them leave to reapply. The landlord was advised that evidence should be filed when she reapplied.

On the tenant's application, the onus is on her to prove her claim. The Act states:

S. 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.

This test must be satisfied:

1. Proof the loss exists
2. Proof the loss occurred solely because of the actions or neglect of the Respondent in violation of the tenancy agreement or the Act
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 reasonable steps to minimize the damage or loss.

I find insufficient evidence to support the tenant's claim. After the hearing commenced, she requested to adjourn the hearing to allow her to file evidence. I declined to grant the adjournment as the tenant did not give adequate notice to the Residential Tenancy Branch, did not have the landlord's consent, the need appeared to arise because of the neglect of the tenant to file any evidence in over a month as her application was filed on June 11, 2014. I found neither party had prepared sufficiently for the hearing so an adjournment was not appropriate to address their negligence.

Conclusion:

I dismiss the application of the landlord and give her leave to reapply. The tenancy is continued. I dismiss the application of the tenant with leave to reapply. Her tenancy is reinstated. I find neither party is entitled to recover filing fees for their applications as neither had filed any evidence to support their claims.

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: August 06, 2014

Residential Tenancy Branch