



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, MNDC, PSF, RP, and RR

Introduction

This hearing was scheduled in response to cross applications.

On November 26, 2014 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to provide repairs, services or facilities agreed upon but not provided; and for authority to reduce the rent.

The Tenant stated that on December 05, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. She stated that she believes the documents were sent to an incorrect address, although they have not been returned to her. The Landlord stated that the documents were sent to his correct address and that he received the documents. They were therefore accepted as evidence for these proceedings.

On December 12, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession.

The Landlord stated that on December 16, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On December 19, 2014 the Tenant submitted documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally served to the Landlord by a friend on December 19, 2014. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On December 05, 2014 the Tenant submitted documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that

these documents were personally served to the Landlord by a friend on December 15, 2014. The Landlord denied receipt of these documents. I have reviewed the documents and determined they are not particularly relevant to my decision in these matters so an adjournment for the purposes of providing the Tenant to re-serve the documents is not necessary. These documents have been considered only for the purposes of determining whether the Tenant applied to cancel the Notice to End Tenancy and not to determine the merits of any of the claims.

On December 19, 2014 the Landlord submitted photographs to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these photographs were served to the Tenant with the Application for Dispute Resolution on December 19, 2014. The Tenant acknowledged receipt of these photographs and they were accepted as evidence for these proceedings.

On December 24, 2014 the Tenant submitted photographs to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these photographs were personally served to the Landlord on December 19, 2014. The Landlord acknowledged receipt of these photographs and they were accepted as evidence for these proceedings.

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

Issue(s) to be Decided

Is there a need to issue an Order requiring the Landlord to provide services/facilities or to make repairs?

Is the Tenant entitled to compensation for being without services, facilities, or repairs?

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord and the Tenant agree that they entered into a written tenancy agreement for a tenancy that was to begin on October 01, 2014, although the Landlord permitted the Tenant to move into the rental unit prior to that date. The parties agree that the tenancy agreement required the Tenant to pay rent of \$700.00 by the first day of each month.

The Landlord stated that on November 27, 2014 he posted a One Month Notice to End Tenancy for Cause on the door of the rental unit. The Tenant stated that she located this Notice on her door on November 27, 2014.

The One Month Notice to End Tenancy for Cause indicated that the Landlord was ending the tenancy because there was a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The Notice declared that the Tenant must vacate the rental unit by December 31, 2014.

The One Month Notice to End Tenancy does not provide the name or address of the Landlord in the body of the Notice, although the Landlord has provided his name at the bottom of the Notice and he has signed the Notice. The Landlord's address is provided on the tenancy agreement.

The Tenant stated that she believes she disputed the Notice to End Tenancy that she received on November 27, 2014, however she was unable to provide a file number to indicate that she filed a second Application for Dispute Resolution in which she applied to cancel the Notice. I could find no evidence in the file or the Residential Tenancy Branch Records Management System to indicate that the Notice has been disputed. I could find no evidence in the file or the Residential Tenancy Branch Records Management System to indicate that the Tenant's original Application for Dispute Resolution has been amended to include an application to cancel the Notice.

During the hearing the Tenant was unable to locate any evidence that the Notice to End Tenancy had been disputed. After the conclusion of the hearing I located a document dated December 03, 2014, in which the Tenant refers to the Notice to End Tenancy. In the body of this document the Tenant wrote: "I dispute this notice due to the fact that my repairs etc. not done". This document was part of the package that was submitted to the Residential Tenancy Branch on December 05, 2014 which the Landlord stated was not served to him.

The Tenant is seeking an Order requiring the Landlord to repair the washing machine. The Landlord and the Tenant agree that sometime in early October of 2014 the Tenant reported that the washing machine that was provided with the rental unit was not working properly. The Landlord stated that he made arrangements to have the machine inspected by a technician; that he informed the Tenant of the time/date of the inspection; and that the Tenant was not home at the scheduled inspection time. The Tenant stated that she was not informed that the machine was to be inspected.

The Landlord stated that a few weeks after the scheduled inspection of the washing machine he learned that the technician had not inspected the machine. He stated that he made no attempt to have the washing machine inspected/repared after the initial attempt. The Tenant is seeking compensation of \$150.00 for having to do laundry elsewhere.

The Tenant is seeking an Order requiring the Landlord to provide a cooking hotplate. The Landlord and the Tenant agree that a hotplate was to be provided with the tenancy and that one was never provided. The Landlord and the Tenant agree that the Tenant told the Landlord that she owned a hotplate. The Landlord stated that he interpreted this to mean that he did not need to provide the Tenant with a hot plate, as the Tenant

never asked him for one again after their initial discussion about the hotplate. The Tenant stated that she was unable to locate the hotplate she owned and that she subsequently informed the Landlord that she required a hotplate.

The Tenant is seeking an Order requiring the Landlord to repair an eavestrough that has separated and is causing water to accumulate near her entrance. The Tenant stated that she has reported the problem to the Landlord on at least three occasions. The Agent for the Landlord stated that the problem was not reported until the Landlord was served documents for these proceedings. He stated that he has since driven by the rental unit, on a day when it was not raining, and he was unable to detect a problem with the eavestrough.

The Tenant is seeking an Order requiring the Landlord to install a smoke alarm. The Landlord stated that he believes the rental unit is equipped with a smoke alarm. The Tenant stated that there is a receiving unit for a smoke alarm in the ceiling but the actual smoke alarm is missing.

The Tenant is seeking compensation for the cost of duplicating a key to the rental unit. The Landlord and the Tenant agree that when the key to the unit was provided to the Tenant the Agent for the Landlord asked the Tenant to duplicate a key and to provide him with a copy of it. The Tenant stated that she did duplicate the key but has not yet provided the Landlord with a copy of it. She stated that she believes she paid approximately \$5.00 to duplicate the key, although she cannot locate her receipt for the cost of duplicating the key.

Analysis

On the basis of the undisputed evidence, I find that the Tenant received a One Month Notice to End Tenancy for Cause on November 27, 2014. As the Tenant filed her Application for Dispute Resolution on November 26, 2014, I cannot conclude that she intended to dispute this One Month Notice to End Tenancy when she filed her original Application for Dispute Resolution.

As I am unable to find any evidence to show the Tenant filed an Application for Dispute Resolution to dispute the One Month Notice to End Tenancy or that she filed an amended Application for Dispute Resolution to include an application to cancel the One Month Notice to End Tenancy, I must conclude that the Tenant has not applied to cancel the One Month Notice to End Tenancy she received on November 27, 2014.

I accept that the Tenant submitted a document to the Residential Tenancy Branch on December 05, 2014, which was dated December 03, 2014, in which she declares that she disputes the Notice, although the Landlord stated he has not been served with a copy of this document.

Even if I were to conclude that the Landlord received a copy of the documents dated December 03, 2014 (which I have not), I would not conclude that this document served

to amend the original Application for Dispute Resolution to include an application to dismiss the Notice to End Tenancy. Rule 2.11 of the Residential Tenancy Branch Rules of Procedure stipulates that an Application for Dispute Resolution may be amended if the hearing has not yet commenced by submitting an amended copy of the Application to the Residential Tenancy Branch and by serving the amended Application to the Respondent. The document dated December 03, 2014 does not serve as an amended Application for Dispute Resolution.

Rule 2.11 of the Residential Tenancy Branch Rules of Procedure further stipulates that the amended Application must be clearly identified, and be provided separately from all other documents. The reference to disputing the Notice to End Tenancy in the document dated December 03, 2014 is not, in my view, clearly identifiable, as it was included in a body of text that refers to some unrelated issues and it was included with a package of other documents, not all of which relate to the Notice to End Tenancy.

I therefore must conclude that the Tenant has not applied to cancel the One Month Notice to End Tenancy she received on November 27, 2014.

Section 52 of the *Act* specifies a variety of information that must be included on a Notice to End Tenancy, the absence of which renders the Notice ineffective. I note that section 52 does not specifically require the Landlord to provide an address on the Notice to End Tenancy. Given that the Notice was signed by the Landlord and that it provides the Landlord's name at the bottom of the Notice, I find that the One Month Notice to End Tenancy that was served on November 27, 2014 is an effective Notice.

Section 47(5) of the *Act* stipulates that a tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenant must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. As I have concluded that the Tenant did not file an application to dispute the Notice to End Tenancy, I find that the Tenant is conclusively presumed to accept that the tenancy is ending on December 31, 2014, pursuant to section 47(5) of the *Act*. I therefore grant the Landlord's application for an Order of Possession.

On the basis of the undisputed evidence, I find that sometime shortly after this tenancy began the Landlord was advised that the washing machine was not working properly. Section 27(2) of the *Act* permits a landlord to terminate or restrict a non-essential service or facility if the landlord gives 30 days' written notice of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

As the washing machine was provided with the rental unit, I find that the Landlord had an obligation to either ensure that it was working properly or to compensate the Tenant for the withdrawal of this service/facility. While I accept that the Landlord made one attempt to have the washing machine inspected by a technician, I find that he should have made at least one more attempt to have the machine inspected/repaired. As the

Landlord did not make a reasonable effort to ensure the machine was working properly, I find that the Landlord must compensate the Tenant for being without a properly functioning washing machine during this three month tenancy.

I find the Tenant's claim of \$150.00 for doing laundry elsewhere to be reasonable, given the inconvenience and expense of doing laundry off-site. I therefore grant her application for a monetary Order in the amount of \$150.00. Given that the tenancy is ending today and the Tenant must vacate the rental unit, I find it unlikely that this repair could be made in time to benefit the Tenant. I therefore find that it is not necessary to issue an Order requiring the Landlord to repair the washing machine

On the basis of the undisputed evidence, I find that a hotplate was to be provided with the rental unit and that one was never provided. Given that the tenancy is ending today and the Tenant must vacate the rental unit, I find it unlikely that the hotplate could be provided in time to benefit the Tenant. I therefore find that it is not necessary to issue an Order requiring the Landlord to provide a hotplate. As the Tenant has been awarded the full amount of her claim for compensation, I am unable to award additional compensation as a result of the hotplate.

On the basis of the testimony of the Tenant, I find that an eavestrough in the rental unit is not functioning properly. I find that the Agent for the Landlord's testimony that he did not notice a problem with the eavestrough when he "drove by" the rental unit has limited probative value, as this is not a reasonable method of inspecting the reported problem.

Given that the tenancy is ending today and the Tenant must vacate the rental unit, I find it unlikely that the eavestrough could be repaired in time to benefit the Tenant. I therefore find that it is not necessary to issue an Order requiring the Landlord to repair the eavestrough. As the Tenant has been awarded the full amount of her claim for compensation, I am unable to award additional compensation as a result of the eavestrough.

On the basis of the testimony of the Tenant, I find that the rental unit is not equipped with a smoke alarm. I find that the Agent for the Landlord's testimony that he believes there is a smoke alarm in the unit is not sufficient to cause me to disregard the Tenant's testimony, given that he has not specifically inspected the unit to determine if there is currently a smoke alarm. Given the importance of a smoke alarm, I order the Landlord to immediately install a functional smoke alarm.

The *Act* authorizes me to order a landlord to pay money to a tenant if the tenant suffers a loss as a result of a tenant breaching the *Act* or the tenancy agreement. There is nothing in the *Act* that requires a tenant to provide a landlord with a copy of a key to the rental unit unless the tenant has changed the locks. As there is no evidence that the Tenant changed the locks, I find that the Tenant was not obligated to copy the key on behalf of the Landlord.

There is nothing in the *Act* that prohibits a landlord from asking a tenant to make a copy of a key to the rental unit. I therefore cannot conclude that the Agent for the Landlord breached the *Act* when he asked the Tenant to copy a key on his behalf. As there is no evidence that the Landlord breached the *Act* by asking for the key to be copied, I am

unable to award compensation for costs associated with the Tenant's decision to comply with the request to copy the key. This is an agreement between the parties that is not governed by the *Act*.

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 Tenant has established a monetary claim, in the amount of \$150.00, and I grant the Tenant a monetary Order for this amount. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: December 31, 2014

Residential Tenancy Branch

