



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNSD, MT, CNR, MNR, MNDC, OLC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- an order to the landlord to make or pay the cost for emergency repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties, and their respective assistants, attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

The landlord testified that he served the 10 Day Notice to the tenant on February 24, 2015 by posting the Notice on the tenant's door. The tenant confirmed receipt of this notice. Therefore, pursuant to section 88 and 90 of the *Act*, I find the tenant deemed served with the landlord's 10 Day Notice on February 27, 2015, 3 days after the notice

was posted. The tenant testified that she served her Application for Dispute Resolution package with Notice of Hearing to the landlord by registered mail on February 28, 2015. The tenant had applied for more time to file her application. She withdrew this application and I note that she has filed within the allowable time frame to dispute a 10 Day Notice.

The landlord testified that he served his Application for Dispute Resolution package with Notice of Hearing to the tenant by sticking it on the door handle at her residence on March 20, 2015. He testified that the door handle was attached to the main entrance of the rental unit. One of the ways that an application under section 55 (order of possession) may be served to the tenant is by attaching a copy to a door or other conspicuous place at the address at which the tenant resides. In this case, the landlord originally applied for an Order of Possession to remove the tenant from the residential premises. The tenant confirmed that the landlord had left the landlord's package in a conspicuous location and that she received the package. Based on the tenant's testimony and pursuant to section 89(2) and 90 of the *Act*, I find the tenant deemed served with the landlord's application for dispute resolution on March 23, 2015, 3 days after its delivery.

The testimony of both parties was that the tenant has now vacated the rental unit. Based on this evidence, the landlord withdrew his application for an Order of Possession and the tenant withdrew her application to cancel the notice to end tenancy, the application that the landlord make repairs and the application that the landlord comply with the *Act*.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damage or loss as a result of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the tenant entitled to a monetary order for damage or loss as a result of this tenancy?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

This tenancy began on September 1, 2012 for a fixed term of two years. After the two year fixed term expired, the tenancy was renewed on a month by month basis. The rental amount was \$1200.00 payable on the first of each month. The landlord testified that he continues to hold a \$600.00 security deposit paid by the tenant on or about

August 29, 2012. Neither party could accurately testify to the exact date the deposit was paid. The landlord sought to retain the security deposit in partial satisfaction of any monetary award.

The landlord originally applied for an Order of Possession for unpaid rent for the month of February 2014 and further rental arrears. The landlord testified that the tenant did not pay rent of \$1200.00 due on February 1, 2015. The landlord testified that there has been a recent pattern of non-payment of rent by the tenant. The landlord's application indicated that the tenant owed outstanding rent for October 2014; November 2014; December 2014; January 2015 and February 2015. The landlord testified that, as of the date of this hearing, the tenant had not paid any rental arrears or paid rent for March 2015. The tenant testified that some of these months' rent had been paid. The landlord clarified that the landlord had received payment from the tenant over the past five months but that the tenant had incurred rental arrears from earlier in 2014 and 2013. The landlord testified that any payment made by the tenant from October 2014 forward only reduced the rental arrears, leaving October through February unpaid. He provided no detailed calculation with respect to the amount sought in his application. The landlord sought a monetary award of \$8400.00 in unpaid rent.

As the parties disagreed with respect to outstanding rental amounts and no clear documentary evidence was made available, both parties were invited to submit further evidence to prove payment or non-payment of rent over the course of the final six months of this tenancy. Both parties provided banking information to reflect their oral testimony regarding rental payments for this tenancy. The materials, referred to in the hearing agree in that the tenant's and landlord's banking statements show no rental payments during February or March 2015.

The tenant sought a \$3000.00 monetary award from the landlord. She testified that she withheld rent in February 2015 because of the landlord's failure to make repairs at the rental unit. She testified that she requested numerous times that the landlord fix the back stairs at the residential premises. She testified that the wood on the back stairs was rotten for the majority of their tenancy and only became worse over time. The tenant also testified that she fell on the rotting back stairs and broke her shoulder, hospitalizing her for two days during the Christmas holidays. She testified that she suffered extreme pain. She submitted that the landlord should pay for his failure to repair the stairs and the resulting suffering she underwent. The tenant also testified that, once she received the notice to end tenancy, she wanted to ensure she kept all of her money for a potential move and so she withheld March 2015 rent. She testified that she vacated the rental unit on March 22, 2015.

The tenant also sought monetary compensation for repairs to the rental unit. She testified that she paid for repairs within the unit but the tenant was unable to either detail the nature of the work or provide any receipts to particularize and document her monetary loss.

The landlord testified that the tenant did not contact him to repair the stairs or any other item within the residence during the course of her tenancy.

Analysis

Given the conflicting testimony at this hearing, much of this case hinges on a determination of credibility. *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.) is a useful guide in considering credibility. In addition to the manner and tone (demeanour) of the witness' evidence, I have considered their content, and whether it is consistent with the other events that took place during this tenancy.

I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed testimony. I have also considered the burden of proof, which falls to each party with respect to their own application for a monetary award. The real test of the truth of the information provided of a witness must align with the balance of probabilities. In the circumstances before me, I find the version of events provided by the landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I find the evidence presented by the landlord more credible than that of the tenant.

While the landlord was not adequately prepared with respect to the provision of evidence to support his application, the landlord's demeanour during the hearing has convinced me of his credibility. He answered all questions to the best of his ability and was reasonable in the majority of his testimony with respect to this tenancy. The landlord acknowledged that he relied on others with respect to accounting and that he was not certain about all dates and amounts. The landlord was unwavering in his testimony that the tenant did not make requests for repairs during the tenancy. Moreover, his evidence was corroborated by the documentary evidence that he was able to submit.

The tenant's evidence, on the other hand, was not as credible. It does not seem reasonable that someone would walk down back stairs that were rotten and unstable as described by the tenant. The tenant's testimony was that she had contacted the landlord numerous times with her concerns over the condition of the stairs. Further, there is a lack of documentary evidence or corroborating evidence that support the tenant's testimony that the stairs were a hazard or that she was hospitalized. Moreover, the

tenant's testimony that she withheld rent on more than one occasion only validates the landlord's claim of unpaid rent for February and March 2015. Under section 26 of the *Act*, a tenant may not withhold rent. A tenant's recourse against a landlord under the *Act* is to file for dispute resolution.

Pursuant to Dispute Resolution Rules of Procedure, section 2.5 of the Rules states that, to the extent possible or in a reasonable time thereafter, on filing an application for Dispute Resolution, the applicant must submit a detailed calculation of any monetary claim being made. The landlord did not provide a detailed calculation of his monetary claim in his application.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Analysis - Landlord's Application:

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord submitted some materials reflecting outstanding rent as did the tenant. The landlord testified with respect to the recent unpaid rental amounts. That testimony was not disputed by the tenant. The tenant's testimony and documentary evidence did not contradict the landlord's evidence that February 2015 and March 2015 rent remains unpaid. The landlord's testimony, combined with the evidence submitted by the landlord with respect to the tenant's rental payments, has persuaded me on the balance of probabilities that the tenant owes rental arrears to the landlord in the amount of \$2400.00 for the months of February and March 2015.

Pursuant to section 67 of the *Act*, the landlord is required to prove, on a balance of probabilities all loss that he claims. Further, he is required to verify the actual amount. The landlord's application sought compensation for unpaid rent described from October 2014 to the date of this hearing. His documentary evidence, while not particularized, appears to reflect outstanding rental arrears from earlier dates.

Based on the evidence submitted and pursuant to section 67 of the *Act*, I find the landlord has proven that the tenant owes rental arrears totalling \$2400.00. Section 26(1) of the *Act* establishes that “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 is not entitled to withhold rent and therefore the landlord is entitled to receive an order for unpaid rent in February and March 2015. I am issuing the attached monetary order that allows the landlord to recover \$2400.00 in unpaid rent owing from February and March 2015.

For this hearing, the landlord failed to provide details clarifying when the tenant did not pay rent. The landlord's application for this hearing indicated that outstanding rental amounts were owed from October 2014 to the end of this tenancy. During the hearing, the landlord testified that the rental arrears arose from prior months and prior years. After this hearing, when provided an opportunity to particularize his claim with respect to the tenant's rental arrears, the landlord did not provide sufficient information to evidence outstanding rent and missed payment dates. With respect to unpaid rent prior to February 2015, I find the landlord has not sufficiently proven his entitlement to his claim for loss of rent. I dismiss his claim for unpaid rent owed prior to February 1, 2015, without leave to reapply.

The landlord testified that he continues to hold a security deposit of \$600.00 plus interest from August 29, 2012 to the date of this decision for this tenancy. There is no interest applicable for this period. I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Analysis - Tenant's Application:

The tenant's application for a monetary order for damage or loss in the amount of \$3000.00 as a result of this tenancy must fail. Not only has the tenant not met her burden in proving damage or loss but the testimony that she has provided as evidence lacks credibility and consistency. The tenant provided insufficient evidence to reflect the need for any repairs in the rental unit. She also failed to provide any evidence that she paid for repairs to the rental unit. Furthermore, the tenant was unable to provide supporting evidence to sufficiently support her testimony that the backstairs were rotting. She testified that she contacted the landlord several times with respect to these

stairs. I accept the landlord's evidence that contradicted the tenant's testimony. The landlord testified that he did not receive any notice of repairs for this rental unit over the course of the tenancy. The tenant also testified that, as a result of walking on the rotting stairs, she fell and broke her shoulder. Despite the fact that she testified to being hospitalized for two days, she provided no documentary evidence to support this claim. Pursuant to section 67 of the *Act*, the tenant bears a burden to provide evidence of her monetary claim. I find that she has not provided sufficient evidence of any portion of her monetary claim.

The tenant testified that she has withheld rent for two consecutive months, contrary to the provisions of her tenancy agreement and the *Act*. Her evidence in regard to rent supports the landlord's claim for rental arrears in February and March 2015. Her testimony overall has not lent credence to her credibility. I find that the tenant is not entitled to a monetary order or recovery of her filing fee. I dismiss the tenant's application for a monetary order as a result of loss and with respect to her application to recover her filing fee.

Conclusion

The tenant withdrew the application for more time to dispute a 10 Day Notice to End, to cancel the notice to end tenancy, the application that the landlord make repairs and that the landlord comply with the *Act*. Therefore, the tenant's application for these outcomes is withdrawn.

The tenant's application for monetary compensation for loss and for recovery of the filing fee is dismissed without leave to reapply.

I grant a monetary order in favour of the landlord as follows;

Item	Amount
Unpaid Rent February 2015	\$1200.00
Unpaid Rent March 2015	1200.00
Less Security Deposit	-600.00
Recovery of Landlord's Filing Fee	50.00
Total Monetary Order	\$1850.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord withdrew his application for an Order of Possession. Therefore, this application is withdrawn.

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 8, 2015

Residential Tenancy Branch