



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 Notice to End Tenancy was personally served on the Tenant on February 12, 2015. I find the Application for Dispute Resolution filed by the tenant was personally served on the landlord on May 6, 2015. I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was personally served on the tenant on May 6, 2015. With respect to each of the applicant's claims I find as follows:

Preliminary Matter:

The Application for Dispute Resolution filed by the tenant claims against two of the landlord's agent but does not claim against the corporation (which owns the property and is the landlord). The agents are not the landlord. I ordered that the style of cause be amended to delete the two agents and replace them with the corporation as landlord.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?

- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?
- e. Whether the tenant is entitled to an order for the reduction of rent for repairs, series or facilities agreed upon but not provided?
- f. Whether the tenant is entitled to a monetary order and if so how much?
- g. Whether the tenant is entitled to an order for the return of the security deposit?

Background and Evidence

The parties entered into an oral tenancy agreement that provided that the tenancy would start on April 1, 2014. The rent is \$625 per month payable on the first day of each month. The tenant paid a security deposit of \$312.50 at the start of the tenancy. The tenant(s) failed to pay the rent for the followings months: May 2014 (\$300 is owing), January 2015 (\$150 is owing), February 2015 (\$625 is owing), March 2015 (\$625 is owing), April (\$625 is owing) and May (\$625 is owing) and the sum of \$2950 remains owing. The tenant(s) have remained in the rental unit.

Landlord's Application - Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant has not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession on 2 days notice. The tenant testified she would be leaving within 2 days.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of May 2014 (\$300 is owing), January 2015 (\$150 is owing), February 2015 (\$625 is owing), March 2015 (\$625 is owing), April (\$625 is owing) and May (\$625 is owing) and the sum of \$2950 remains owing. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. I granted the landlord a monetary order in the sum of \$2950 plus the sum of \$50 in respect of the filing fee for a total of \$3000.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$312.50. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$2687.50.

Tenant's Application:

The tenant seeks a monetary order in the sum of \$25,000. The tenant's claim is primarily based on personal injury caused by bedbug bites..

The tenant testified that she first experienced problems with bedbugs in January 2015. She blames the presence of bedbugs on the failure of the landlord to properly clean and treat an adjoining rental unit that was previously occupied by C. C left the rental unit in August 2015. He failed to take his furniture and the tenant submits that the bedbugs migrated from his unit to her unit. The tenant produced photographs which show bites on her body. She also produced several doctors' notes which describe treatment.

Tenant's Witness #1 was a previous tenant in the rental property who was unsuccessful in claiming against the landlord. She testified the rental property has a major bedbug problem.

The representative of the landlord disputes the tenant's claim. He testified that upon receiving a complaint from the tenant he asked Landlord's Witness #1 to treat the problem. The tenant refused to give him access on the basis that he was not a professional. The representative of the landlord then hired a Pest Control Company who inspected the entire building and carried out treatments where necessary. The tenant refused to give him access. He has made treatments of other rental units in the building on March 31, 2015, April 9, 2015 and May 4, 2015 but was denied access to the tenant's rental unit. The tenant testified she objected to giving the contractor access because the contractor told her she would have to throw away her bed and couch and it did not seem reasonable that her rental unit be treated if she would have to throw away these items.

Landlord's Witness #1 testified he accompanied the pest control contractor. The pest control contractor advised him there are no bedbugs in C's unit. Landlord Witness #1 lives on the other side of the rental unit previously occupied by C and he testified he has not experienced any problem with bedbugs or cockroaches. However, the rental unit on the other side of the tenant's unit did experienced bedbug problems but they have been resolved after treatment.

The Law:

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.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the

damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find that in order to justify payment of damages under sections 67 of the Act, the Applicant tenant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in losses to the Applicant pursuant to Section 7. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss, in this case the tenants, bears the burden of proof and the evidence furnished by the Applicant tenants must satisfy each component of the test below:

- a. Proof that the damage or loss exists
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- c. Verification of the Actual amount required to compensate for loss or to rectify the damage
- d. Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

With respect to each of the tenant's claims I find as follows:

- a. After considering the disputed evidence and on the balance of probabilities I find that the tenant has failed to prove the bedbug and cockroach problem was caused by the negligence or conduct of the landlord for the following reasons:
 - The tenant failed to prove the problem originated in the rental unit previously occupied by C. According to the testimony of the tenant

C left in August 2014. There is a 5 month period between when he left and when she experienced problems.

- Landlord's witness #1 who lives on the other side of C has not experienced a bedbug or cockroach problem. However the rental unit on the other side of the tenant has had problems. This suggests the problem has originated in the tenant's unit.
- The tenant has failed to give the landlord access to treat the bedbug problem on several occasions. In failing to give the landlord access the tenant has failed to sufficiently mitigate any loss. In such a situation where the tenant failed to give the landlord access to rectify the problem, the tenant is not entitled to compensation.

- b. I dismissed the tenant's claim for the cost of painting and cleaning when the tenant took possession. The landlord did not agree to pay the tenant for such work. It was open to the tenant to file an Application for Dispute Resolution at the time seeking a repair order but she failed to do so. The tenant failed to present receipts or verify actual amounts spent.
- c. I dismissed the tenant's claim of \$125 for cleaning supplies as this claim has not been proven.
- d. I dismissed the tenant's claim of \$625 for double the security deposit. The tenant has failed to provide the landlord with her forwarding address. The Act provides that the landlord has 15 days from the end of the tenancy or when he receives her forwarding address in writing to deal with the security deposit or file a claim. The landlord filed a claim within that 15 day period as the tenant is still in the rental unit.

Summary:

In summary I dismissed the tenant's claim. I granted an Order for Possession on 2 days notice. The tenant stated she would be out within that time period. I granted the

landlord a monetary order in the sum of \$2950 plus the sum of \$50 in respect of the filing fee for a total of \$3000. I determined the security deposit plus interest totals the sum of \$312.50. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$2687.50.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: May 25, 2015

Residential Tenancy Branch

