



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- other remedies identified as an order of possession for breach of a mutual agreement to end tenancy ("mutual agreement"), pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord's agent, CFC ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he is the property manager for this rental building and that he had authority to represent the landlord named in this application, as an agent at this hearing.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application.

Preliminary Issue – Continuation of Hearing in Tenant's Absence

The tenant disconnected from the hearing unexpectedly and without warning, seven (7) minutes after it began at 9:30 a.m. Just prior to the tenant disconnecting from the hearing, I was inquiring as to whether the tenant could minimize the background noise as she was driving during the hearing. The tenant became upset and began speaking loudly over me, insisting that she wanted to delay the hearing. When I inquired as to the reason for delaying the hearing, given that the tenant has known about it for almost two months, as the landlord's application was filed on July 2, 2015, the tenant became more upset and continued speaking over me. As I was explaining to the tenant that I could not hear her comments because she was continuously speaking over me, the tenant disconnected from the hearing. The tenant only provided

testimony with respect to service of the landlord's application before she disconnected from the hearing.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing: The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

After waiting a few minutes for the tenant to reconnect with the hearing, I continued the hearing in the absence of the tenant. The hearing lasted approximately 30 minutes and the tenant did not reconnect again during the hearing. The landlord was present for the entire hearing and he provided submissions with respect to the landlord's Application.

Preliminary Issue - Clarification and Amendment of Landlord's Application

During the hearing, the landlord clarified that the landlord's Application for "other" relief was provided in the "details of the dispute" portion of the Application. In the details of dispute, the landlord indicated "want apply for order of possession." The landlord stated that he was not applying for an order of possession based on any notice to end tenancy and therefore he did not use any of the other checkboxes provided on the application for an order of possession. The landlord stated that he was applying for the order of possession based on the parties' mutual agreement to end tenancy. The landlord provided a copy of this mutual agreement with the landlord's Application and the tenant confirmed that she received this evidence with the landlord's Application. Accordingly, I considered the landlord's Application for an order of possession under "other" relief at this hearing, as I find the tenant had notice of the landlord's Application through the "details of the dispute" section.

The landlord confirmed that he was no longer seeking \$1,500.00 for July 2015 rent from the tenant. He indicated that this matter settled at a previous hearing. Accordingly, the landlord's monetary Application is amended to remove July 2015 rent of \$1,500.00. I find no prejudice to the tenant in amending the landlord's claim in this regard, as it reduces rather than increases the landlord's claim.

The landlord confirmed that he wished to amend the landlord's Application to add a monetary order for a loss of rent for September 2015 in the amount of \$1,250.00. The landlord did not apply for September rent at the time of his application in July 2015; the landlord only applied for July and August 2015 unpaid rent. The tenant disconnected from the hearing prior to the landlord advising that he wished to amend his Application. I am not satisfied that the tenant had proper notice that the landlord was seeking a future loss of rent for September 2015 at this hearing. Accordingly, the landlord will have to make a new application for dispute resolution if he wishes to recover September 2015 rent.

Issues to be Decided

Is the landlord entitled to an Order of Possession for breach of a mutual agreement to end tenancy?

Is the landlord entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to recover the filing fee for this Application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on December 1, 2014. Monthly rent in the amount of \$1,500.00 is payable on the first day of each month. A security deposit of \$750.00 was paid by the tenant. The landlord testified that the tenant continues to reside in the rental unit, as her belongings were still in the rental unit on the day before this hearing.

The landlord confirmed that previous hearings were held before different Arbitrators with respect to this tenancy. A decision was issued by an Arbitrator on April 6, 2015, with respect to the hearings on February 2, February 12 and March 6, 2015. A review consideration decision was issued by another Arbitrator on April 27, 2015, after an application was made by the tenant to review the April 6, 2015 decision. Another decision was issued by a different Arbitrator on July 15, 2015, after a hearing on the same date. The two file numbers for all three decisions appear on the front page of this decision.

The April 6, 2015 decision made a number of different orders regarding the tenant's application. Relevant to this hearing, the Arbitrator awarded the tenant a rent reduction until the heating system was repaired, the tenancy ended or an Arbitrator's order ended the rent reduction; whichever event occurred first. The rent reduction is recorded as \$25.00 per month from April to October 2015 rent. However, the landlord indicated that the tenant was given a rent reduction of \$250.00 per month for April, May and June 2015. The landlord did not provide clear evidence as to whether the reduction was \$25.00 or \$250.00 per month, as he could not recall the decision or hearing, since he did not appear at the hearing and only heard about it from the landlord named in this Application. The review consideration decision of April 27, 2015 dismissed the tenant's review application for the April 6, 2015 decision. The July 15, 2015 decision was a settlement by both parties of the tenant's application. In that settlement, the landlord agreed to end the tenancy at the end of July 2015 and the tenant was not required to pay July 2015 rent of \$1,500.00.

The landlord indicated that, as per the mutual agreement signed by the parties, half of May 2015 rent was paid by the tenant's security deposit of \$750.00 and the other half of \$750.00 was paid by the landlord for hydro and gas costs. The landlord confirmed that June 2015 rent was not required to be paid by the tenant, as per the mutual agreement. The landlord noted that

July 2015 rent of \$1,500.00 was not required to be paid by the tenant as per the settlement reached at the July 15, 2015 hearing.

The landlord seeks a monetary order of \$1,250.00 for unpaid rent for August 2015. The landlord stated that the tenant has not made any payments towards this rent. The landlord indicated that he was reducing the landlord's monetary claim from \$1,500.00 to \$1,250.00 because of the rent reduction order made at the April 6, 2015 hearing. The landlord stated that he did not wish to provide evidence of whether the heating system was repaired so he accepted that the rent reduction was still in place and it was \$250.00 per month rather than \$25.00 per month which is indicated in the April 6, 2015 decision.

The landlord is also seeking to recover the \$50.00 filing fee for this Application from the tenant.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant disconnected from the hearing early. The parties had a mutual agreement to end the tenancy on June 30, 2015. However, the tenant did not vacate by that date. The parties reached a settlement agreement at the July 15, 2015 hearing where they agreed to end the tenancy at the end of July 2015. The landlord stated that the tenant was still living in the rental unit on the day before this hearing, August 31, 2015. The settlement decision of July 15, 2015 indicates that the landlord is not barred from pursuing an application for remedies and losses under the *Act* if the tenant fails to vacate the rental unit at the end of July 2015. I accept the landlord's testimony that the tenant has not yet vacated the rental unit and she was required to vacate by the end of July 2015. Accordingly, I find that the landlord is entitled to a 2 day Order of Possession.

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. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$1,250.00 for August 2015. The tenant was still residing in the rental unit until at least August 31, 2015, the day before this hearing. I accept the landlord's amendment to reduce his claim from \$1,500.00 to \$1,250.00, as the landlord explained that he wished to respect the previous Arbitrator's order from the April 6, 2015 hearing and he did not wish to provide evidence about the heating system. I find no prejudice to the tenant in doing so as this is a reduction rather than an increase in the landlord's monetary claim. Therefore, I find that the landlord is entitled to \$1,250.00 in rental arrears for August 2015.

As the security deposit of \$750.00 has already been used to pay for half of May 2015 rent, as per the mutual agreement, this amount cannot be offset against the monetary award being given to the landlord.

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

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$1,300.00 against the tenant. The landlord is provided with a monetary order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this 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: September 01, 2015

Residential Tenancy Branch

