



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, FF, MT, CNC, MNDC, ERP, RP, PSF

Introduction

This hearing dealt with applications from both the landlord and the tenants 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 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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Preliminary Issue:

Are the tenants entitled to an order for more time to make an application for dispute resolution? If so, are the tenants entitled to an order to cancel the 10 Day Notice?

Section 66 of the Act sets out the circumstances in which an arbitrator can extend time limit established by the Act:

- (1) The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).
- (2) Despite subsection (1), the director may extend the time limit established by section 46(4)(a) for a tenant to pay overdue rent only in one of the following circumstances:
 - a. The extension is agreed to by the landlord;
 - b. The tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Residential Tenancy Policy Guideline, “36. *Extending a Time Period*” provides me with guidance as to the interpretation of section 66:

The word “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word exceptional implies that the reason for failing to do something at the time required is strong and compelling. Furthermore, as one Court noted, a “reason” without any force of persuasion is merely an excuse. Thus, the party putting forward said “reason” must have some persuasive evidence to support the truthfulness of what is said.

The tenants received the landlord’s notice to end tenancy dated July 29, 2015 in person on July 29, 2015. The tenants applied for dispute resolution on August 14, 2015 which is 16 days after the notice was received. The tenants have 10 days upon which to file an application for dispute resolution to dispute the notice. The tenants stated that due to a “lack of money” they were unable to get to the Service BC office to file their application. The tenants stated that they had to wait for their ministry cheque to pay a friend to drive them to the Service BC office on August 14, 2015. The tenants stated that they paid the friend \$20.00 plus gas money to drive them to the Service BC office.

At the outset of the hearing the tenants withdrew their claims for:

MNSD- The return of the security deposit;

MNR- A Monetary Order for the cost of Emergency Repairs;

FF- Recovery of the Filing Fee.

The landlord withdrew his claims for:

MNR- A Monetary Order for Unpaid Rent

MNSD- the right to retain all or part of the security deposit.

As such no further action is required for the withdrawn portions of the landlord's and tenants' applications.

Section 63 of the *Residential Tenancy Act* provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows;

1. Both parties agreed to mutually end the tenancy on January 31, 2016 at or before 1:00 pm.

Pursuant to this agreement the tenant will be given a monetary order to reflect condition #1 of this agreement. Should it be necessary, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The above particulars comprise full and final settlement of all aspects of the dispute arising from these applications for both parties concerning possession of the rental property.

I also order that as the tenancy is coming to an end that the tenants' request for emergency repairs, for repairs to the rental property and the tenants' request for the landlord to provide services or facilities required are dismissed.

The hearing proceeded with the tenant's request for a monetary order for money owed or compensation for damage or loss.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

This tenancy began April 8, 2009 on a 1 year fixed term tenancy ending on April 30, 2010 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated April 8, 2009. The monthly rent was \$750.00 payable on the 1st day of each month and a security deposit of \$375.00 was paid.

The tenants filed an application for a monetary claim of \$5,000.00, but have provided a monetary worksheet showing details of a monetary claim for \$2,650.00 of:

Removal of Bed Bugs/Cleaning	\$ at a later date
Furniture	\$800.00
Laundromat/Laundry	\$?
Loss of Rent	\$750.00
Playstation	\$300.00
2 Mountain Bikes	\$500.00
Laptop Computer	\$300.00

The tenants have also provided written submissions for compensation of:

Two months of rent to be paid back
Full Damage Deposit Returned
The rent rebate and all other damages totalling:
 1st Month rebate \$775.00
 2nd Month rebate \$775.00
 Damages plus interest \$258.30 interest unknown
Total amount \$1,808.30 plus unknown damages.

The tenants stated that there were bedbugs in the rental premises and that the landlord does not perform regular maintenance. The tenants stated that their primary request for compensation was for "liable" on the part of the landlord. The tenant provided direct testimony that a dryer vent was not properly "hooked up". The sidewalk was "uneven" and that the yard required weeding as it covered the sidewalk.

The landlord disputed that claims of the tenants stating that the rental property was properly maintained and that he was never informed of any of these issues prior to the application being filed by the tenants.

Analysis

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. In this case, the onus is on the tenants to prove on the balance of probabilities that the landlord caused the damage/loss and that it was negligence on the part of the landlord.

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. The tenants have failed to provide sufficient evidence that the landlord was aware of any deficiencies or that the landlord failed to act. The tenant's monetary claims are unsubstantiated and without explanation as the tenants have failed to provide any details of the amounts claimed or where the detailed amounts originated from.

As such, the tenant's monetary claim is dismissed without leave.

Conclusion

The tenants' monetary claim is dismissed.

A mutual agreement to end the tenancy was made ending the tenancy on January 31, 2016 and the landlord was granted an order of possession.

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: November 02, 2015

Residential Tenancy Branch

