



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0896572 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant ERP

For the landlord – OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for an Order for the landlord to make emergency repairs for health or safety reasons. The landlord applied for Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The tenant advised me that his first name and middle name were in the wrong order on the landlord's application. The parties did not raise any objections to the error being corrected and this has now been amended on the style of cause.

Issue(s) to be Decided

- Is the tenant entitled to an Order for the landlord to make emergency repairs?
Is the landlord entitled to an Order of Possession for unpaid rent?
Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for the money owed or compensation for damage or loss?

Background and Evidence

The landlord testified that the tenant was living in another unit and asked to be moved to this unit. Consequently a new tenancy agreement was signed by both parties and the tenant moved into this unit on August 21, 2015 for a fixed term period of one year. The landlord has provided a copy of the tenancy agreement in documentary evidence. The tenant testified that he moved into this unit in December and he did not get a copy of the tenancy agreement. The parties do agree that rent for this unit is \$750.00 per month and is due on the 1st of each month.

The landlord testified that the tenant failed to pay rent for February, 2016 and a 10 Day Notice to End Tenancy for unpaid rent (the Notice) was served upon the tenant in person on February 03, 2016. The Notice informed the tenant that he had five days to either pay the outstanding rent or file an application for dispute resolution to dispute the Notice. The landlord testified that no rent has been received from the tenant for February or March, 2016.

The landlord testified that paragraph seven of the tenancy agreement provides that a late fee of \$50.00 per month will be applied in any month that rent is paid late. As the tenant has paid rent late for February and March the landlord seeks a Monetary Order for \$100.00.

The landlord seeks an Order of Possession effective within 48 hours and a Monetary Order to recover the unpaid rent, the late fee and the \$100.00 filing fee.

The tenant agreed that he has withheld his rent for February and March, 2016. The tenant testified that there is a smell of death in the carpet of his unit. A previous tenant had died in the unit and although the landlord has stated that that person died peacefully in their sleep the tenant had the police look up the information for this unit and told the tenant that the person who

died in that unit was not found for two weeks. The tenant testified that he asked the landlord to replace the carpet or the underlay and clean the carpet but the landlord refused. The tenant has also had to deal with a leak in his bathroom for a month and 10 days.

The tenant testified that there are three empty units but the landlord will not move the tenant so the tenant withheld his rent. The tenant agreed that he has not paid any amount for emergency repairs and has not filed an application to dispute the Notice.

The landlord testified that he wrote to the tenant and addressed his concerns. The person who died in the unit was an old man who died peacefully in his sleep; there is no blood on the carpet; and the room had not been shut up for a year as suggested by the tenant in his application. The room has been used continually. The landlord testified that as to the water leak this was dealt with by the landlord's maintenance man and the tenant has not raised any further concerns since. The carpet was wet when the water leaked in the bathroom but was dried out using fans.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which states:

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.

I am satisfied from the undisputed evidence before me that there is outstanding rent for February and March, 2016 of **\$1,500.00**. Consequently, it is my decision that the landlord is entitled to recover this amount and will receive a Monetary Order pursuant to s. 67 of the *Act*.

With regard to the landlord's claim to recover \$50.00 per month for late fees for February and March, 2016; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

7 (1) *A landlord may charge any of the following non-refundable fees:*

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is a clause contained in the agreement that provides for an administrative fee of \$50.00 per month for late fees. Consequently, pursuant to s. 7(1)(d) of the regulations I find I must limit the landlord's claim to the amount prescribed under the regulations to \$25.00 per month. The landlord is therefore entitled to recover a total of **\$50.00** in late fees for February and March, 2016.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$100.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$1,500.00
Late fees	\$50.00
Filing fee	\$100.00
Total amount due to the landlord	\$1,650.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end on February 14, 2016. The tenant did not pay all the outstanding rent within five days and did not apply to dispute the Notice to End Tenancy.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession effective two days after service pursuant to s. 55 of the *Act*.

I refer the parties to s. 33 of the *Act* which outlines what constitutes an emergency repair.

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

The tenant has insufficient evidence to show that the carpet smell falls under an emergency repair or that the leak in the bathroom was not previously repaired by the landlord. Furthermore, as this tenancy will end I find the tenant's application for emergency repairs must be denied. The tenant's application is therefore dismissed.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,650.00** pursuant to s. 67 and 72(1) of the Act. The Order must be served on the tenant; if the tenant fails to comply with the Order, The Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favor of the landlord effective two days after service upon the tenant. This Order must be served on the tenant; if the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's application is dismissed without leave to reapply.

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: March 04, 2016

Residential Tenancy Branch

