



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, ET, MNR, MND, MNSD;CNR, OLC, ERP, RP, PSF, RR

Introduction

This hearing dealt with the landlord's application only against one tenant, MN aka MS ("tenant") pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent and breach of an agreement, pursuant to section 55;
- an early end to this tenancy and an Order of Possession, pursuant to section 56;
- a monetary order for unpaid rent, utilities and damage to the rental unit, pursuant to section 67; and
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38.

This hearing also dealt with both tenants' cross-application against the landlord pursuant to the *Act* for:

- cancellation of the landlord's two 10 Day Notices to End Tenancy for Unpaid Rent, dated January 11 and 18, 2016 ("two 10 Day Notices") pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to make emergency repairs for health or safety reasons, pursuant to section 33;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65; and
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The landlord and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that she had authority to speak on behalf of “tenant JS,” her husband and the other tenant named in the tenants’ application, as an agent at this hearing. This hearing lasted approximately 57 minutes in order to allow both parties to fully present their submissions and to negotiate a settlement of both applications.

Both parties confirmed receipt of the other party’s application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party’s application.

I had not received black and white photographs that the tenant says she submitted to the landlord and the Residential Tenancy Branch (“RTB”). The landlord confirmed receipt of the tenants’ photographs. I asked the tenant to provide me with copies of the same black and white photographs that were sent to the landlord, on March 1, 2016 after the hearing, by way of facsimile. I received these photographs from the tenant on March 3, 2016, and reviewed them prior to making my decision. The tenant also submitted text messages after the hearing, which I asked her not to send, as the landlord was not served with this evidence prior to the hearing; accordingly, I did not consider the tenant’s text messages in my decision.

At the outset of the hearing, the tenant confirmed that her maiden surname “N” was her legal surname, as listed in the style of cause on the front page of this decision. She stated that she signed the tenancy agreement using her married name “S” and sometimes uses both names interchangeably. Accordingly, both names are reflected in the style of cause on the front page of this decision.

Issues to be Decided

Is either party entitled to the relief as outlined above?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties’ claims and my findings are set out below.

Both parties agreed that this tenancy began on December 1, 2015 and that monthly rent in the amount of \$1,400.00 is payable on the first day of each month. Both parties agreed that a security deposit of \$700.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was provided for this hearing.

The landlord seeks unpaid utilities of \$55.06 from the tenant. The tenant agreed that she owed this amount and would pay it to the landlord.

The landlord seeks unpaid rent of \$1,400.00 for each month from January to March 2016, totalling \$4,200.00. The tenant agreed that she did not pay rent of \$4,200.00 for the above months. The tenant stated that with respect to March 2016 rent which was due on the date of this hearing of March 1, 2016, she had not yet paid it because she was waiting for my decision to determine whether she was required to pay it.

The tenant stated that rent was not paid because emergency repairs have to be completed by the landlord and the cost is more than the rent. She said that there are problems with the washer and dryer machines in the rental unit and the landlord failed to fix or replace them. The tenant said that she has had to use a laundromat to do her family's laundry and she does approximately two loads per day at a cost of \$7.00 per load. The landlord said that the laundry machines in the rental unit were checked and while they were initially vibrating, they are now functioning properly after being fixed.

The tenant also noted that another emergency repair is a rotting floor surrounding the bathtub in the bathroom of the rental unit. She said that it is not safe to use the bathtub and there is a danger of falling through the floor surrounding the bathtub. She indicated that the landlord agreed to replace the bathtub at the beginning of the tenancy but has failed to do so. The tenant confirmed that she and her family have to shower at her mother's house and while it is free for them to do so, she has to pay for gas to drive there and there is an extra cost for her mother's utilities. The landlord stated that there is no rotting floor surrounding the bathtub as she has inspected it. She indicated that there is a small stain in the bathtub, which is not rotting, and she has used a mat to cover the stain.

The tenant stated that the landlord agreed to replace the deck at the beginning of the tenancy but the landlord has not done so and she has stored her own belongings there. The tenant stated that the tenants are entitled to a storage facility at the rental unit.

Analysis

Settlement of End of Tenancy Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of one part of their dispute.

Both parties agreed to the following final and binding settlement of one issue currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 8:00 p.m. on March 26, 2016, by which time the tenants and any other occupants will have vacated the rental unit;

These particulars comprise the full and final settlement of one aspect of this dispute for both parties. Both parties testified at the hearing that they understood and agreed to the above term, free of any duress or coercion. Both parties testified that they understood and agreed that the above term is legal, final and binding and enforceable, which settles a portion of this dispute.

The tenant agreed during the settlement discussion that she was aware that she was making this agreement on behalf of tenant JS as well and that he was bound by the above settlement term. Therefore, the order of possession is enforceable against both tenants, even though the landlord's application was only made against the one tenant, not tenant JS, because the tenant agreed to this during the settlement discussion.

Burden of Proof

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Application

I award the landlord \$55.06 in unpaid utilities, as the tenant agreed to pay this amount.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or 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.

Both parties agreed that the tenant failed to pay rent from January to March 2016. Therefore, I find that the landlord is entitled to \$4,200.00 in rental arrears against the tenant only. I award the landlord March 2016 rent because the tenant acknowledged that she was not prepared to pay rent to the landlord for this month until receiving my decision. I find that the tenants' complaints about the laundry, bathroom, deck and storage do not fall under the categories of emergency repairs under section 33(1)(c) of the *Act*. I further find that the tenants were unable to provide specific evidence regarding section 33(3)(b) of the *Act*, of the two dates that they telephoned the landlord regarding the repairs. Therefore, I find that the tenants have no entitlement to deduct any amounts from their monthly rent.

The landlord continues to hold the tenants' security deposit of \$700.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit of \$700.00 in partial satisfaction of the monetary award. No interest is payable over this period.

Tenants' Application

I dismiss the tenants' application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement; an order requiring the landlord to make emergency repairs for health or safety reasons; an order requiring the landlord to make repairs to the rental unit; an order requiring the landlord to provide services or facilities required by law; and an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

I find that the tenants failed to prove that emergency repairs are required at the rental unit, as noted above.

I find that the tenants failed to prove that regular repairs are required, as the landlord disputed the tenants' claims, stating that the laundry machines were fixed and the

bathroom floor and bathtub were inspected and there were no problems. The tenants did not provide written documentation sent to the landlord indicating when they requested repairs, what repairs were required and when they were requested to be done. The tenants did not produce documentary evidence from the plumber that they spoke with, who estimated the cost for replacing the bathtub, as noted in their application. The tenants did not produce documentary evidence from a certified professional who inspected the bathroom floor, bathtub or laundry machines to indicate that there were problems with them. The black and white photographs provided by the tenants were blurry, difficult to see, and close-up views; therefore, it is not apparent where there may be damage, and whether there is rust in the bathtub and mold or rotting on the bathroom floor. It is also not apparent by looking at the blurry photographs that the laundry machines "shifted" and are "hanging off the edge" as indicated by the tenants.

I find that storage is not included as a service or facility with rent as per the tenants' written tenancy agreement which does not have this box checked off on page two of the agreement. I also find that the tenants failed to prove that the landlord agreed to replace the deck at the beginning of the tenancy, as they did not provide documentary evidence about this with their application. I find that the tenants failed to prove that the landlord obstructed their use of the deck, as the photograph provided by the tenants was blurry and difficult to see, only showing a small pile of unidentifiable items in the corner of the deck.

I find that a past or future rent reduction is not appropriate because the tenants have failed to prove entitlement to repairs, facilities or services, as noted above.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant(s) and any other occupants fail to vacate the rental premises by 8:00 p.m. on March 26, 2016. The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order in the event that the tenant(s) and any other occupants fail to vacate the rental premises by 8:00 p.m. on March 26, 2016. Should the tenant(s) 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 \$3,555.06 against the tenant only, as the landlord only made her application against the one tenant. 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.

The landlord's application for an order of possession for unpaid rent, breach of an agreement and an early end to tenancy, and the tenants' application to cancel the landlord's two 10 Day Notices were settled at this hearing, as noted above. The landlord's two 10 Day Notices, dated January 11 and 18, 2016, are cancelled and of no force or effect.

The remainder of the tenants' application is dismissed without leave to reapply.

The landlord's application for a monetary order for damage to the rental unit is dismissed with leave to reapply, as the landlord provided no evidence about this claim at this hearing.

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 03, 2016

Residential Tenancy Branch

