



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDS, FF; CNR, MNR, MNDC, ERP, RP

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") 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 the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated January 27, 2016 ("10 Day Notice"), pursuant to section 46;
- a monetary order for the cost of emergency repairs to the rental unit, pursuant to section 33;
- 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;
- an order requiring the landlord to make emergency repairs for health or safety reasons, pursuant to section 33; and
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33.

The landlord and his English language interpreter, YJ (collectively "landlord") and the tenant and her agent, SS (collectively "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 landlord confirmed that his interpreter had authority to

provide English language interpretation services for him at this hearing and the tenant confirmed that her agent had authority to speak on her behalf at this hearing.

This hearing lasted approximately 129 minutes, in order to allow both parties, particularly the tenant, to fully present their submissions. I note that the tenant repeatedly asked the same questions and sought legal advice during this hearing. I advised the tenant that I could not provide legal advice during this hearing. I also endeavored to answer the tenant's questions, provide information about the hearing process and explain matters as clearly and efficiently as possible. The hearing was lengthened by the fact that the tenant required information repeated and was unsure of her own claims and positions being advanced at this hearing.

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.

The tenant confirmed that although she did not receive the landlord's application within three days of it being filed on February 16, 2016, she received it on February 28, 2016. The tenant confirmed that she reviewed the landlord's application, that she had notice of the landlord's claims and that she was prepared to respond to the landlord's application at this hearing. The tenant could not demonstrate any prejudice as a result of receiving the landlord's application outside of the three day time period. Accordingly, as I found no prejudice to the tenant, I proceeded with the hearing and this decision.

The tenant confirmed receipt of the landlord's 10 Day Notice on January 27, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on January 27, 2016.

Issues to be Decided

Are the parties entitled to the relief as noted 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 month-to-month tenancy began on July 1, 2015. Both parties agreed that monthly rent in the amount of \$675.00 is payable on the 7th day of

each month. The landlord testified that a security deposit of \$200.00 was paid by the tenant, while the tenant claimed that it was \$300.00. A written tenancy agreement was not provided for this hearing. The landlord claimed that the tenant signed a written tenancy agreement, while the tenant denied this fact. The tenant continues to reside in the rental unit with her husband, who is also the co-tenant and her agent at this hearing. The tenant lives in one unit of a two-unit basement suite, which is part of a three-level house. Other tenants live in the remainder of the house.

The landlord issued the 10 Day Notice to the tenant, which indicates an effective move-out date of February 6, 2016. Both parties agreed that the tenants failed to pay rent of \$300.00 for each month from December 2015 to March 2016, totalling \$1,200.00. The landlord seeks a monetary order for the \$1,200.00. The landlord also seeks a monetary order for a further \$637.00 for unpaid rent from June to July 2015. The tenant said that she paid all rent for June and July 2015. The landlord also seeks to recover the \$100.00 filing fee for this Application from the tenant.

The tenant said that she did not pay all rent owed from December 2015 to March 2016 because there were a number of emergency repairs required at the rental unit. She said there were rats infesting the entire unit, there were water leaks in different areas, and the landlord removed the cable television services that were initially provided for free from March 1 to November 1, 2015. The tenant seeks compensation of \$400.00 for a loss of cable television services and \$1,500.00 for the rats, water leaks and noisy tenants living upstairs in the same house. The tenant confirmed that she did not wish to pursue her claim of \$500.00 for rats and water leaks, as this duplicate claim was made in error.

Analysis

I find that the tenant provided contradictory testimony throughout this hearing. The tenant often provided one version of events and then switched to another, and then reverted back to the first version. When asked when rent was paid and what amounts were paid, the tenant provided confusing and unclear testimony. Where there has been a conflict in testimony between the landlord and tenant, I have often preferred the evidence of the landlord, who I found to be a more credible and reliable witness as his evidence remained consistent and forthright throughout the hearing.

I find that the tenant failed to pay the full rent due on January 1, 2016, within five days of receiving the 10 Day Notice. Although the tenant made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice, she did not have authority to deduct any amounts from rent for emergency repairs. The tenant did not

provide evidence that she had or paid for any emergency repairs to be done, such that she could deduct the amounts from rent. Therefore, the tenant's claim for a monetary order for the cost of emergency repairs is dismissed without leave to reapply.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent or file an application for dispute resolution for valid reasons, led to the end of this tenancy on February 6, 2016, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by February 6, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. Accordingly, the tenant's application to cancel the landlord's 10 Day Notice is dismissed without leave to reapply.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. Both parties agreed that rent is due on the 7th 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.

The tenant was required to vacate the rental unit by February 6, 2016, the effective date on the 10 Day Notice. The tenant continues to reside in the rental unit, causing loss to the landlord under section 7(1) of the *Act*. Both parties agreed that the tenant owes \$1,200.00 for rent from December 2015 to March 2016. Therefore, I find that the landlord is entitled to \$1,200.00 in rental arrears.

I further find that the landlord is entitled to \$637.00 in rental arrears from June to July 2015. I find that the tenant failed to pay this amount. I find that the landlord produced documentary evidence, whereby the tenant agreed that she wrote down the above amounts owed for the above months. During the hearing, the tenant provided contradictory testimony regarding the amounts that she paid for rent for the above months, stating that income assistance paid \$375.00 directly and \$300.00 was paid in cash for each month, and then claiming that she paid the \$300.00 owing for June and the \$337.00 for July.

As the landlord was successful in his Application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the Application.

I find that the tenant failed to prove that she paid \$300.00 for her security deposit. The tenant said she did not receive a receipt from the landlord for the above amount.

However, the tenant did not produce banking or other documentary records to show that she paid \$300.00. Therefore, I find that the tenant only paid \$200.00 for the security deposit, based on the landlord's evidence.

The landlord continues to hold the tenant's security deposit of \$200.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$200.00 in partial satisfaction of the monetary award. No interest is payable over this period.

Tenant's Application

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish a claim, in accordance with section 67 of the *Act*. To prove a loss, the tenant must satisfy the following four elements, on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord 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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

RTB Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be

awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

I award the tenant nominal damages of \$200.00 for the rat and excessive noise problems in the rental unit. I find that the tenant failed to provide documentary evidence that she is entitled to \$1,500.00 in losses, and she provided no breakdown or justification for this amount. I find that the tenant showed, through photographs, testimony and a letter to the landlord, that there were rats in the rental unit that the landlord failed to address in a timely, efficient matter. The tenant confirmed that the rat problem become progressively worse over time, rather than better, despite the rat traps that the landlord offered. The tenant confirmed that she notified the landlord about the problem repeatedly and that he only offered the same rat traps and powders, rather than professional pest control. The tenant noted that the rats would crawl on her face at night and that they would defecate all over the unit especially on top of and around the fridge, spoiling food. I find that although the landlord's claim that the rental unit was dirty may have some merit, there were approximately seven other tenants living in the house at the time and there was garbage outside of the unit from all tenants. Therefore, I find that the tenant cannot be fully responsible for the rat problem.

I also find that the tenant proved that there was excessive noise in the rental unit from other tenants living upstairs. The landlord agreed with this fact, said that the other tenants were excessively noisy, were banging things around and that he wanted them to leave the rental unit. The tenant provided letters to the landlord and medical records, indicating that she attended at the hospital, visited her doctor and took medications because the noise and banging were so loud from the upstairs tenants that she was frightened, particularly when at home alone. The tenant also provided photographs of a light fixture that came loose in the rental unit due to the excessive noise and banging from above.

I find that the tenant failed to provide sufficient evidence of water leaks, providing only blurry photographs of water droplets in different areas, and I dismiss her claim for compensation in this regard without leave to reapply.

I dismiss the tenant's application for \$400.00 for cable television compensation, without leave to reapply. I find that the tenant failed to produce written documentary evidence to indicate that the landlord agreed to pay for cable television on behalf of the tenant or to include this amount in rent. The tenant was also unable to support the costs that she claimed with documentary evidence, saying that she was seeking \$100.00 per month for a four month period of loss, totalling \$400.00.

I dismiss the tenant's application for emergency and regular repairs to be performed at the rental unit, as this tenancy is not continuing.

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 \$1,537.00 against the 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 tenant's application for emergency and regular repairs, a monetary order for the cost of emergency repairs, and to cancel the landlord's 10 Day Notice, 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 21, 2016

Residential Tenancy Branch

