



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, MND
Tenant: CNR, MNR, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim, in both the landlord's and the tenant's Applications, regarding the 10 Day Notice to End Tenancy for Unpaid Rent and the continuation of this tenancy are not sufficiently related to either the landlord's claim for compensation for painting and lawn maintenance or the tenant's claim for compensation for moving costs; cleaning; painting or appliance repairs. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The other claims made by each party are unrelated in that the basis for them rest largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss the landlord's claim for compensation for painting and lawn repair and the tenant's claim compensation for moving costs, cleaning, painting, and appliance repairs. I grant both parties leave to re-apply for these additional claims.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent and for all or part of the security deposit, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act* (Act).

It must also be decided if the tenant is entitled to cancel the 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the Act.

Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on November 23, 2015 for a 18 month and 2 week fixed term tenancy beginning December 16, 2015 for a monthly rent of \$2,250.00 due on the 1st of each month with a security deposit of \$1,125.00 paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on February 21, 2016 with an effective vacancy date of March 2, 2016 due to unpaid rent in the amount of \$4,500.00.

The landlord submitted that the parties entered into the tenancy agreement and the tenant provided him with a cheque post-dated to December 31, 2015 for the security deposit and ½ month's rent for the month of December, 2015. The landlord stated that he has not received any other rent payment for the months of January, February, March, or April 2016.

The tenant agreed that she has not paid rent for the months of February, March or April 2016. However, the tenant originally testified that the cheque in the amount of \$2,250.00 dated December 31, 2015 was for rent for January 2016. Upon my requests for clarification the tenant acknowledged that the parties had originally agreed that she would pay the landlord ½ month's rent for the period of December 16, 2015 to December 31, 2015 and the security deposit. She stated further that based on the issues she has encountered since moving in to the rental unit she has unilaterally decided that she should not have to pay the security deposit or rent for the ½ month in December 2015. She considers the cheque dated December 31, 2015 is for rent for January 2016.

The tenant identified that since the beginning of the tenancy a number of issues have arisen. She stated that the landlord had given her a key that did not work for the house (which she acknowledged was resolved the same day); the house had not been cleaned prior to the start of her tenancy; the baseboard heaters were not working; there was a moth nest in the living room that destroyed the existing currents; one of the rooms required painting; the tenancy was supposed to include storage in the garage; that the landlord left the garage with her belongings unlocked and then he removed all of her belongings and put them outside.

The tenant submitted that she did not contact the landlord about some of these issues because she thought that he was out of town as he had indicate he would be at the

time. She stated that the landlord had left his father's contact information for her should she need to contact him but she wasn't going to do so unless an extreme emergency such as a flood occurred.

The tenant provided extensive testimony regarding all of these issues that were of concern to her. She stated that she withheld the rent because the landlord had failed to deal with these issues.

Analysis

Section 26 of the *Act* states that 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 the right under this *Act* to deduct all or a portion of the rent. Allowable reasons include an overpayment of a security deposit; payment of a rent increase that is not allowable under the *Act*; for the costs of completing emergency repairs after following specific steps; as ordered by an Arbitrator.

I find the tenant did not provide any testimony regarding an overpayment of a rent increase or security deposit. She did submit that she decided she would not pay the security deposit or ½ month rent for December 2015 because of the condition of the rental unit and that she converted the amount she had paid for security deposit to ½ of the rent for January 2016.

Section 21 of the *Act* states that unless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit to rent. The tenant provided no evidence that she had written consent from the landlord to do so.

As such, I find the tenant had no authority under the *Act* to convert the security deposit that she had paid to the landlord to rent. Therefore I find the tenant has failed to pay at least ½ month's rent for the month of January 2016.

In regard to the tenant's justification of the condition of the rental unit, I find the only possible relevant section of the *Act* is Section 33(1). This section of the *Act* defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- Major leaks in pipes or the roof,
- Damaged or blocked water or sewer pipes or plumbing fixtures,
- The primary heating system,
- Damaged or defective locks that give access to a rental unit, or
- The electrical systems.

Section 33(3) states a tenant may have emergency repairs made only when all of the following conditions are met:

- Emergency repairs are needed;
- The tenant has made at least 2 attempts to telephone the person identified by the landlord as the person to contact for emergency repairs; and
- Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Section 33(5) stipulates that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Section 33(7) allows that if a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

From the description of the problems identified by the tenant I find that none of them relate to any type of emergency repair and even if they did the tenant made no attempts to contact the landlord to get him or his emergency contact person to address the issues; she has not identified that she had to pay for any emergency repairs; or provide the landlord with a receipt for any emergency repairs. As such, I find the tenant could not deduct any amounts from rent for emergency repairs.

I find the tenant has provided no evidence or any testimony to show that she had any authority under the *Act* to withhold any amount of rent for the months of January, February, March and April 2016.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Based on my finding above, I find the landlord had authority under Section 46 of the *Act* to issue the 10 Day Notice to End Tenancy for Unpaid Rent on February 21, 2016. I find the tenant did not have authority to withhold any rent and as such, I find the Notice is valid and effective.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$9,000.00** comprised of rent owed.

I order the landlord may deduct the security deposit and interest held in the amount of \$1,125.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$7,875.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: April 15, 2016

Residential Tenancy Branch