



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RR, FF

Introduction

This hearing dealt with an application by the tenant seeking to have a One Month Notice to End Tenancy for Cause set aside, a monetary order, an order to allow the tenant a reduce rent for repairs, services or facilities agreed upon but not provided and an order to recover the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Preliminary Issues

At the outset of the hearing the tenant stated that she is only seeking a monetary order of \$5200.00 as she is moving out on April 30, 2016. The tenant stated that she is abandoning the balance of her application. The landlord stated that he still requests an order of possession out of an abundance of caution. The tenant stated she agreed that the landlord should be entitled to an order of possession and does not dispute their request. Based on the above the landlord is granted an order of possession pursuant to Section 55 of the Act.

Issues to be Decided

Is the tenant entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The tenant gave the following testimony:

The tenancy began on or about 3 and half years ago. The landlords purchased the property in March 2016. Rent in the amount of \$2000.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$1000.00 and a pet deposit \$1000.00. The tenant stated that the landlord undertook to re-pipe the house as it was in need of upgrading and that the landlords' insurance company required it. The tenant stated that the work commenced on March 5, 2016 and is ongoing.

The tenant stated that the landlords' workers leave a large mess after each day that they work. The tenant stated that she has been without water on numerous occasions. The tenant stated that she feels that since her home is a "construction zone" she should be entitled to the

equivalent of two months' rent = \$4000.00. The tenant stated that the stress of this situation along with the time to prepare this application has caused her to miss five days of work and seeks to be compensated for lost wages of \$1200.00.

The landlords gave the following testimony. The landlords adamantly dispute the tenants' claims. The landlords stated that the tenant did not provide any notice, written or verbal as to her issues with the repairs. The landlord stated that the tenant only provided all of the information and evidence for this hearing on April 13, 2016. The landlords stated that the tenant was the one that was causing this work to become protracted. The landlords stated that the tenant would deny access, lock up the workers tools without allowing them access, disconnect their power tools from the power source, berate the workers, demand that they leave the property and was often drunk and abusive to them.

The landlords stated that the tenant was running a grow operation of marijuana plants and that she was doing all she could to keep them from it. The landlords stated that the home is 4000 square feet and that they were conducting the work in stages to ensure that the tenant always had access to water, a bathroom and kitchen. The landlord stated that the tenant would not allow the men to clean up at the end of the day even though they were prepared to do so. The landlord stated that the tenants digital evidence primarily depicts the outside of the home and therefore gives no merit to the claim as brought forward.

Analysis

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of 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.

The tenants' documentary and digital evidence was neither helpful nor relevant. The evidence did not depict the deficiencies as she stated during her testimony. In addition, the tenant did not provide any evidence as to the steps she took to mitigate the loss or that the landlord was negligent or reckless. Based on all of the above, I find that the tenant did not satisfy any of the above grounds and I therefore dismiss her request for \$4000.00 compensation.

As the tenant was unsuccessful in the first portion of her claim, I also find that the tenant did not provide any justification to be awarded the recovery of lost wages and I dismiss that portion of her application.

The tenant has not been successful in this application.

Neither party submitted a copy of the notice to end tenancy but both parties agreed to its content and the date of service. As the tenant did not have any issue with the landlord being granted an order of possession and chose not to dispute the notice, I find that the landlord is entitled to an order of possession. It is worth noting that although the tenant did not dispute the notice, the landlord provided sufficient evidence to satisfy me that the tenancy was to end based on the tenant significantly interfered with or unreasonably disturbed the landlord or other occupants and seriously risked the health, safety or rights of the landlord or other occupant. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession. The tenants' application is dismissed in its entirety.

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 27, 2016

Residential Tenancy Branch