



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDC, OLC, RR, O, and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid rent; for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for authority to reduce the rent; for "other"; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on May 19, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant submitted to the Residential Tenancy Branch on June 01, 2016 were sent to the Landlord, via registered mail. The Landlord #2 acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant stated that on June 07, 2016 an Amendment to the Application for Dispute Resolution was sent to the Landlord, via registered mail. The Landlord #2 acknowledged receipt of this document.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

The Tenant applied to amend the Application for Dispute Resolution to name the Landlord with the initials "P.M." as the sole Respondent in the Application for Dispute Resolution and to amend the spelling of that Landlord's name, as was provided by that Landlord at the hearing. As the Landlord with the initials "P.M." did not oppose the application for an amendment, the Application for Dispute Resolution was amended to reflect the correct spelling of the sole Respondent's name.

Preliminary Matter #2

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant has

identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

The Tenant indicated that the most urgent issue in dispute is possession of the rental unit and I will, therefore, only consider issues related to possession of the rental unit at these proceedings, which include the application to set aside a Ten Day Notice to End Tenancy for Unpaid Rent.

I also considered her claims related to personal property that was removed from the rental unit. These claims were considered as there was a potential that they related to the continued possession of the rental unit. After hearing the details of the claims it is apparent the claims do not relate to the continued possession of the rental unit, however it is fitting that I adjudicate these claims now that I have heard the details of the claims.

The balance of the issues in dispute is dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Is the Tenant entitled to compensation for property that was removed from the rental unit?

Background and Evidence

The Landlord and the Tenant agree that the Tenant is required to pay \$1,000.00 rent for the rental unit by the first day of each month.

In support of the application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent the Tenant stated that:

- the Tenant currently owes \$2,000.00 in rent for the period ending on June 30, 2016;
- she did not pay her rent for May or June of 2016 because a realtor told her she was entitled to a free month's rent because the Landlord was selling the rental unit;
- she has not been served with a Two Month Notice to End Tenancy;
- on June 01, 2016 she found a Ten Day Notice to End Tenancy for Unpaid Rent, dated June 01, 2016, on the door of the rental unit; and
- the Ten Day Notice to End Tenancy declared that she must vacate the rental unit by June 10, 2016.

In response to the application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent the Landlord #2 stated that:

- the Tenant currently owes \$5,000.00 in rent for the period ending on June 30, 2016;
- a Ten Day Notice to End Tenancy for Unpaid rent, dated June 01, 2016, was posted on the door of the rental unit, although he does not know when it was posted; and
- the Ten Day Notice to End Tenancy declared that the Tenant must vacate the rental unit by June 10, 2016.

In support of the application for compensation for property that was removed from her rental unit the Tenant stated that:

- the Landlord told her that he was removing the stove from her rental unit in order to comply with a local bylaw;

- on May 17, 2016 the Landlord removed her stove from the rental unit in preparation for a bylaw inspection for the rental unit;
- on May 17, 2016 the Landlord also removed personal property from the bedroom of her rental unit;
- the Landlord placed some of her personal property on the floor in the living room of the residential complex;
- the Landlord disposed of some of her personal property;
- the Landlord discarded dinnerware, which she estimates was worth \$300.00;
- the Landlord discarded food, which she estimates was worth \$120.00;
- the Landlord discarded soap and shampoo, which she estimates was worth \$60.00;
- the Landlord discarded a rug, which she estimates was worth \$50.00;
- she was unable to locate her wallet after the Landlord removed her personal items, which she estimates was worth \$150.00; and
- she had to wash many items that were left on the floor, for which she is seeking compensation of \$100.00.

In response to the application for compensation for property that was removed from her rental unit the Landlord #2 stated that:

- the stove in the Tenant's rental unit was removed in order to comply with a local bylaw, although he cannot recall when it was removed; and
- the Landlord did not remove any of the Tenant's personal property from her bedroom.

The Tenant submitted photographs of property that had been removed from her bedroom and left in the living room. The Landlord #2 stated that he does not know how the property in those photographs came to be on the floor of the living room.

The Tenant submitted a photograph of a letter from the municipality that declares the residential property will be inspected on May 18, 2016 to determine if the residential property is being used as a single family dwelling.

The Tenant submitted no receipts or estimates to establish the value of her personal items that she is missing.

Analysis

On the basis of the testimony of both parties I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,000.00 for the rental unit by the first day of each month and that the Tenant currently owes at least \$2,000.00 in rent for the period ending June 30, 2016.

Section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on June 01, 2016.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant acknowledged receiving the Notice on June 01, 2016 I find that the earliest effective date of the Notice was June 11, 2016.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy was June 11, 2016.

As the Tenant has been served with a Ten Day Notice to End Tenancy and rent is still outstanding, I find that the Landlord has the right to end the tenancy pursuant to section 46 of the *Act*. As the Landlord has the right to end the tenancy pursuant to section 46 of the *Act*, I dismiss the Tenant's application to set aside the Ten Day Notice to End Tenancy that is dated June 01, 2016.

As I have dismissed the Tenant's application to set aside the Ten Day Notice to End Tenancy that is dated June 01, 2016, I must issue an Order of Possession to the Landlord pursuant to section 55(1) of the *Act*.

I favour the testimony of the Tenant, who stated that the Landlord removed personal property from her bedroom, over the testimony of the Landlord #2, who stated that no personal property was removed from the Tenants' bedroom. In reaching this conclusion I was heavily influenced by the photographs and the copy of the letter from the municipality that were submitted in evidence by the Tenant, as I find they corroborate the version of events provided by the Tenant. In the absence of any other explanation for why this personal property was piled in the living room, I find they were, on the balance of probabilities, placed there by the Landlord in preparation for a municipal inspection in which the Landlord was required to show that there was not a secondary suite in the home.

Section 26(3) of the *Act* stipulates that a landlord must not seize and personal property from a tenant or prevent or interfere with a tenant's access to their personal property. I find that the Landlord breached section 26(3) of the *Act* when he moved the Tenant's property out of her bedroom without her consent, some of which were discarded and/or lost.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In addition to establishing that the Landlord disposed of the Tenant's personal property, a Tenant must also provide some evidence of the value of the missing items. I find that the Tenant failed to establish the cost of replacing the personal property that was discarded and/or lost by the Landlord. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as receipts or estimates, which corroborates the Tenant's estimated values of the items that were discarded/lost. As the Tenant has failed to establish the value of the discarded/lost items I award nominal damages in the amount of \$50.00.

I find that the Tenant is entitled to compensation of \$100.00 for the time she spent cleaning items that were left on the floor, as that was a direct consequence of the Landlord breaching section 26(3) of the *Act*.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to compensation, in the amount of \$100.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Tenant has established a monetary claim of \$250.00, which includes \$100.00 for cleaning personal items left on the floor, nominal damages of \$50.00, and \$100.00 for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2)(a) of the *Act*, I authorize the Tenant to withhold \$250.00 from the rent due for May of 2016, in full satisfaction of this monetary claim.

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: June 20, 2016

Residential Tenancy Branch