



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This was a cross-application hearing.

On August 19, 2016 the tenant applied to cancel a 10 day Notice to end tenancy for unpaid rent issued on August 17, 2016; compensation for the cost of emergency repairs, compensation for damage or loss under the Act, an order the landlord make emergency repairs; an order the landlord make repairs to the unit; an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee cost from landlord.

On September 21, 2016 the landlord applied requesting an order of possession, a monetary order for unpaid rent and to recover the filing fee costs from the tenant.

Preliminary Matters

The landlords attended the hearing at the scheduled start time and were affirmed.

The landlord confirmed service of the hearing documents and evidence to the tenant on September 23, 2016.

The landlord confirmed receipt of the tenants' hearing documents.

The tenant entered the hearing nine minutes after the hearing commenced and was affirmed. The landlords' application was reviewed with the tenant and the tenant was informed the landlord had been affirmed. The tenant confirmed receipt of the landlords' hearing documents and evidence on September 23, 2016.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Has the tenant paid the cost of emergency repairs that would entitle the tenant to a rent reduction?

Is the tenant entitled to compensation for loss of property and income?

Must the landlord be ordered to make emergency repairs and repairs to the rental unit?

May the tenant make deductions from rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenancy commenced on August 1, 2013. Rent is \$825.00 per month, due in advance or by the first day of each month. The landlord is holding a security deposit in the sum of \$412.00. A copy of the tenancy agreement was supplied as evidence.

The landlord purchased the rental unit and assumed the tenancy effective July 1, 2016. The landlord said that at the beginning of July 2016 all tenants in the building were provided with landlord information as a result of the sale of the property.

The tenant confirmed receipt of a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of August 27, 2016. The landlord served the Notice by hand to the tenant on August 17, 2016.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,130.00 within five days after the tenant received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant confirmed that \$520.00 cash was paid in July 2016 and that since that time no further rent has been given to the landlord. A receipt for the payment was not issued. The landlord provided a copy of a detailed bank deposit that included the tenants' payment, combined with payment made by other occupants of the building. Each payment was listed separately.

The landlord has set out a claim for unpaid rent totaling \$2,760.00, from July to October 2016, inclusive. No rent has been paid since July 2016, in the sum of \$520.00.

The tenants' application set out a claim in the sum of \$286.00 (two water tank repairs in the sum of \$198.00 each; \$600.00 for damage and loss of property and \$90.00 for the loss of one-half day work. The application included a notation that the fridge needed repair and that the landlord was not completing lawn maintenance.

The tenant stated that she did not supply evidence in support of her claim as she has been in court as the result of a subpoena. As a result of the requirement to attend court the tenant could not make any evidence submissions in support of her claim; the tenant did not have time.

The tenant said there were receipts and photographs and that a lot of evidence was available. When the tenant applied for dispute resolution the receipt for repair had not yet been issued. The tenant understood evidence must be supplied at least 14 days before the hearing, but the tenant ran out of time and could not foresee that the trial would last so long. The tenant could not explain why she did not have someone else submit the evidence or why other arrangements were not made to serve the evidence. The tenant then said if she had known the time line she

could have made the submission. The tenant did not reference any documents during the hearing, to set out specifics of the claim made.

The tenant said that the landlord gave her a telephone number that was different from other occupants of the building. The tenant had left the landlord a message regarding repairs and the landlord had not responded. The tenant confirmed meeting with the landlord in early August 2016 and said that after seeing the hot water tank, the landlord failed to make the repair. The tenant said the water line was bursting. The tenant stated that rent withheld was not just due to water problems but condensation in the storage area and yard work the tenant had to complete.

The landlord said that some time during the first week of August he went to the rental unit to meet the tenant. The tenant told the landlord there was a problem with the hot water tank, so the landlord examined the tank and could not find any problem. The tenant had a large amount of personal property next to the hot water tank. The tenant agreed to move her property and to then call the landlord. The tenant was given the landlords' phone number but did not contact the landlord for further follow-up. The landlord said all other occupants were given the same telephone number and have been able to contact him without any difficulty.

Analysis

I find that rent is \$825.00 per month, the sum indicated on the tenancy agreement signed by the tenant.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant filed an application disputing the Notice ending tenancy; however, the tenant failed to bring forward any evidence that would support the claim that emergency repairs were completed in accordance with section 33 of the Act.

Section 33 of the Act provides:

Emergency repairs

33 (1) *In this section, "emergency repairs" means repairs that are*

- (a) urgent,*
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and*
- (c) made for the purpose of repairing*
 - (i) major leaks in pipes or the roof,*
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,*
 - (iii) the primary heating system,*
 - (iv) damaged or defective locks that give access to a rental unit,*

- (v) the electrical systems, or*
- (vi) in prescribed circumstances, a rental unit or residential property.*

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;*
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;*
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.*

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and*
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.*

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;*
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);*
- (c) the amounts represent more than a reasonable cost for the repairs;*
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

(7) 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.

I find on the balance of probabilities that the tenant was given the landlords' contact information in early August. There was no evidence before me that the landlord had posted emergency contact information in July 2016. However, the tenant must prove on the balance of probabilities, that emergency repairs were completed in the sum of \$303.00; the sum deducted from rent owed in July 2016.

I have considered the tenants' submission that she was barred from submitting evidence since the time of the application made on August 17, 2016 and have rejected that submission. The tenant provided nothing to substantiate the claim that she had evidence, such as receipts, supporting deductions made from the rent owed. There was no effort made by the tenant to submit evidence by facsimile; a process that can occur outside of office or court hours. The tenant did not make any efforts to place the evidence in the mail or to have another person serve the documents. I found the tenants' testimony on the matter of evidence inconsistent and lacking veracity. Further, the landlord has not been given copies of any receipts, as required by section 33(5)(b) of the Act.

As explained during the hearing, section 26(1) of the Act provides:

26 (1) *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 a right under this Act to deduct all or a portion of the rent.*

In the absence of any evidence of compliance with the requirements of section 33 of the Act, which would support a deduction from rent, I find that the tenant has withheld rent, in breach of the Act. The tenant supplied no evidence of repairs completed that support a deduction in the sum of \$303.00 from July 2016 rent due. Further, the tenant has continued to withhold rent due in the absence of any authority to do so.

Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; August 27, 2016.

As the tenancy ended effective August 27, 2016 I find that the landlord is entitled to occupation rent based on a per diem in the sum of \$27.12 for each day beyond the tenancy end date.

Therefore, I find that the landlord is entitled to unpaid rent from June to August 17, 2016 and occupation rent from August 28 to October 17, 2016, inclusive, totaling \$2,414.04.

The balance of the landlords' claim is dismissed with leave to reapply.

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord has been granted an order of possession that is effective two days after service to 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.

Based on these determinations I grant the landlord a monetary order in the sum of \$2,514.04. In the event that the tenant does not comply with this order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

I find that the landlord did examine the hot water tank, that no emergent issue was identified. The tenant had the landlords' contact information, which was given again on the Notice ending tenancy. The tenant provided nothing to substantiate a claim that would support any rent

reduction or need for repair or any evidence of attempts to contact the landlord with a request for repair. Therefore, I find that the tenants' application is dismissed.

I note that in accordance with section 26(2) of the Act; the landlord must issue a receipt for all cash payments made by a tenant.

Conclusion

The landlord is entitled to an order of possession and monetary order for unpaid rent and per diem rent in the sum of \$2,514.04. The balance of the claim is dismissed with leave to reapply.

The landlord is entitled to filing fee costs.

The tenants' claim is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 17, 2016

Residential Tenancy Branch