



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR MNDC

Introduction:

Both parties attended the hearing and confirmed that the landlord personally served a 10 Day Notice to End Tenancy on November 28, 2016. The tenant filed this Application on December 7, 2016 and served it personally to the landlord that day. I find the documents were legally served pursuant to sections 88 and 89 of the Act. The landlord states that the Application to Dispute is too late (outside of the 5 days permitted under section 46 of the Act) so should be dismissed. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To extend the time to file this application as she had serious and compelling reasons for being late in filing;
- b) To cancel a Notice to End the Tenancy for non-payment of rent pursuant to section 46;
- c) To limit the landlord's entry into the suite pursuant to section 29;
- d) An order for a refund of rent pursuant to section 65 because of lack of maintenance contrary to section 32;
- e) To obtain recovery of the security deposit pursuant to section 38 of the Act; and
- f) To obtain a monetary order for damages.

Issues: Is the tenant entitled to any relief? Has the tenant proved on a balance of probabilities that she is entitled to compensation as claimed?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. It is undisputed that the tenancy began on May 1, 2016, rent is \$950 payable on the first of each month and the tenant paid a security deposit of \$475. The landlord testified that the tenant failed to pay the rent in the amount of \$870 owed in November, 2016 and that the rent is still outstanding. The tenant disputed that amount.

The landlord read her accounting records as follows:

She said the tenant began to have some payment problems in August 2016. In September the tenant paid \$150 (on the 7th), \$150 (on the 14th), \$100 (on the 21st) and \$200 (on the 23rd). The total paid in September 2016 was \$600.

In October the tenant paid \$350 (on the second)
In November the tenant paid \$330 (on the 5th) and \$700.
The total amount owed was \$1900 and the tenant paid only \$1030 as of November so she owed \$870 as claimed in the Notice to End Tenancy.

The parties agreed that no rent has been paid since. The tenant said that was because she hurt her knee when she fell on the steps that the landlord had failed to repair. She claims she has been unable to work at her house cleaner job and estimates her lost income at \$3375 for November and December 2016. She said she consulted her lawyer and he said the house insurance should have covered this. The landlord said that she consulted the insurer and the tenant needs to file a claim. The tenant said she was never informed of this.

The landlord said she has received no rent and needs a monetary order for unpaid rent. The parties interrupted each other frequently and were warned several times. An Order of Possession date of January 31, 2017 was discussed and the tenant said she could leave by that date. After 50 minutes of the hearing, they continued to interrupt, largely with other unrelated claims so the hearing was terminated.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. I find the landlord's evidence credible regarding the amounts of rent owed as her account was clear with amounts and dates.

I find the tenant did not dispute the Notice in time. She claimed her 'serious and compelling' reason was that she had no telephone and could not file online at another location because she was immobilized by her knee injury caused by the broken stairs. The landlord said the tenant was able to come to her door two days later and also had access to Wi-Fi telephone. I find the tenant's evidence inconsistent that she had no access to a phone or internet as she included with her evidence text messages sent on December 6, 2016 and photographs taken with her cell phone. I find December 6, 2016 was within the window of 5 days allowed in section 46 to pay the rent or to file the Application so I dismiss the tenant's Application to cancel the Notice to End Tenancy.

Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. The landlord has made this request at the hearing. As a result I grant the landlord an Order for Possession effective January 31, 2017.

With respect to the landlord's claim for rent owed, I am not at liberty to hear, nor consider, a monetary claim by the landlord during these proceedings as the matter before me was convened to deal only with the *tenant's* application under the Act, and was not an application filed by the landlord. No cross application was ever filed by the landlord although the landlord claims no rent has been paid for December 2016 and January 2017 as well as the \$870 owed as of November 28, 2016. The Act does not give me authority to award a monetary order for unpaid rent unless the landlord makes their own application.

That being said, I must point out that the landlord is at liberty to make their own application if the landlord wants to pursue their claim for compensation for rent owed pursuant to sections 46 and 67 of the Act. In the matter before me, however, I find that I can only consider the applicant tenant's claims.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find section 32 of the Act requires the landlord to maintain the property in a state of repair that complies with housing and safety standards. I find a broken step in a set of stairs does not comply with safety standards. However, in respect to the tenant's claim for \$3375 for loss of clients due to her knee injury, I find insufficient evidence that her losses were entirely due to falling through the step on November 7, 2016. The tenant in a text states that she already had a knee injury and was awaiting surgery for it.

Therefore, I find insufficient evidence that the failure to repair the step for 6 days was the sole cause of the tenant's injury which has resulted in her losing work and income,

although it may have made the existing injury worse. I find that the steps were unrepaired for 6 days so I allow the tenant a rebate of rent for 6 days for loss of use of a safe staircase to her unit. I find this was caused by the failure of the landlord to repair the steps when it was first noticed that one was becoming unsafe. I find the tenant entitled to a rebate of rent of \$184 which she may deduct from rent owed to the landlord.

I find the tenant's claim appears to belong in another forum as the tenant is planning to claim against the landlord's insurer for her losses. I find insufficient evidence of her actual losses, if any, as her list of wages lost is a handwritten page prepared by herself without corroboration by any of her employers.

Regarding her claim for the return of her security deposit, I find the Act does not provide for the premature return of the tenant's security deposit as she is still in residence in the unit. The tenant's security deposit will remain in trust where it is to be dealt with in accordance with section 38 of the Act after the tenant vacates.

Conclusion:

I dismiss the application of the tenant to cancel the Notice to End Tenancy. The tenancy is at an end on December 7, 2016. No filing fee was involved.

I HEREBY ORDER that the tenant may deduct \$184 rent rebate from rent money owed to the landlord.

I HEREBY ORDER that the landlord provide the tenant with the necessary details of her insurer so the tenant may file an insurance claim for compensation if she wishes to pursue it.

I grant the landlord an Order for Possession effective January 31, 2017. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: January 11, 2017

Residential Tenancy Branch

