



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – OPR, OPC, OPB, MNR, MND, MNDC, FF

For the tenant – MT, CNC, CNR, MNR, MNDC, PSF, RP, RR, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for more time to file an application to two Notices to End Tenancy for unpaid rent and for cause and for an Order to cancel both the 10 Day Notice and the One Month Notice to End Tenancy. The tenant also applied for a Monetary Order for the cost of emergency repairs and for money owed or compensation for damage or loss under *the Residential Tenancy Act (Act)*, regulations or tenancy agreement. The tenant seeks an Order for the landlord to make repairs to the unit; to provide services or facilities required by law, for an Order to reduce rent for repairs, services or facilities agreed upon but not provided and other issues.

The landlord applied for Order of Possession for unpaid rent or utilities; an Order of Possession for cause and an Order of Possession because the tenant breached an agreement with the landlord. The landlord also seeks a Monetary Order for unpaid rent, a Monetary Order for damage to the unit; and to recover the filing fee from the tenant for the cost of this application. The landlord had also applied for an Order of Possession based on an early end to tenancy and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; however, the landlord withdrew these sections of her application at the hearing.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The

landlord and tenant provided some documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of some evidence.

A discussion took place regarding part of the tenant's documentary evidence which was sent to the Residential Tenancy Branch ("RTB") and the landlord last week. This evidence was forwarded to the Arbitrator during the course of the hearing. The landlord confirmed she has not had time to respond to the tenant's late evidence package. In considering Rule 3.15 of the Rules of Procedure, the tenant as an applicant, must submit their evidence so that it is received by the RTB and the other party not less than 14 days prior to the hearing when the tenant's evidence is connected to her application, In this case, the tenant did not and her evidence was sent late. In considering whether to accept the tenant's evidence, I find that the tenant delayed in sending their evidence. I have therefore excluded this portion of the the tenant's evidence for consideration in this matter and the tenants oral testimony was considered instead.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together. I will therefore deal with the tenant's application for more time to cancel the Notices to End Tenancy, to cancel the 10 Day Notice to End Tenancy and the One Month Notice to End Tenancy and the tenant's application for the cost of emergency repairs and for money owed or compensation for damage or loss. I will not deal with the remaining sections of the tenant's claim at this hearing.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to an Order of Possession for cause?
- Is the landlord entitled to an Order of Possession because the tenant breached an agreement with the landlord?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the tenant entitled to more time to file her application to dispute the 10 Day Notice and the One Month Notice?
- Is the tenant entitled to an order to cancel either the 10 Day Notice or the One Month Notice?
- Is the tenant entitled to a Monetary Order for the cost of emergency repairs?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties have provided a copy of the tenancy agreement in documentary evidence. The landlord testified that the tenancy started on October 01, 2016. The tenant testified that she could not move into the unit due to repairs and cleaning until October 31, 2016. Rent for this unit was agreed at \$650.00 per month due on the first of each month. No security deposit was paid by the tenant.

The landlord testified that the tenant failed to pay rent for January, 2017 of \$650.00. The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent or utilities (the 10 Day Notice) on January 03, 2017 by posting the 10 Day Notice to the tenant's door. The 10 Day Notice informed the tenant that she owed rent of \$650.00 due on January 01, 2017 and that she had five days to either pay the outstanding rent, or file an application to dispute the 10 Day Notice or the tenancy would end on the effective date of the 10 Day Notice of January 16, 2017.

The landlord testified that the tenant did not pay the outstanding rent and did not file an application to dispute the 10 Day Notice until January 23, 2017. The landlord testified that the tenant did pay rent for February, 2016 and was verbally informed that the landlord was still going ahead with her application for an Order of Possession. The landlord therefore seeks an Order of Possession effective at the end of March, 2017 to give the tenant extra time to find somewhere else to live.

The landlord seeks to recover the unpaid rent of \$650.00.

The landlord testified that the tenant was also served with a One Month Notice to End Tenancy for cause (the One Month Notice) on January 03, 2017. This was also posted to the tenant's door. The One Month Notice had an effective date of February 28, 2017 and provided the following reasons to end the tenancy:

- 1) *The tenant is repeatedly late paying rent.*
- 2) *The tenant or a person permitted on the residential property by the tenant has*
 - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
 - (iii) *Put the landlord's property at significant risk;*
- 3) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (i) *Damaged the landlords' property*
 - (ii) *Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
 - (iii) *Jeopardized a lawful right or interest of another occupant or the landlord*
- 4) *The tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property;*

5) Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord testified that the tenant's unit is located above the landlord's restaurant. The landlord came into work and found the police at the front door to the rental units above. The front door glass had been smashed. The police informed the landlord that the glass was broken by the tenant and her boyfriend who were arguing. The police then had to attend at the tenant's unit due to further arguments between the tenant and her boyfriend. The police provided a file number to the landlord.

The landlord testified that this has left the building unsecure in an area where there are issues with security; this has left the landlord's property at risk and the safety of other tenants and their units was jeopardized. The tenant also caused a disturbance to the landlord and other tenants. The tenant screams and yells at the landlord. The landlord testified that the tenant also made some unauthorised repairs in the unit which have caused significant damage to the unit and the ceiling in the landlord's restaurant. The tenant had a plumber take off the kitchen faucets without permission even though the landlord had a plumber lined up to do the work. This caused a flood into the restaurant and could have potentially caused a fire. This occurred on December 31, 2016. The police had to come again to accompany the landlord into the tenant's unit to shut the water off as the tenant was acting violently towards the landlord.

The landlord testified that the tenant fighting with her boyfriend while under the influence of alcohol is an illegal activity. The landlord testified that furthermore the tenant has failed to pay her security deposit within 30 days as per the tenancy agreement.

The landlord seeks an Order of Possession based on the reasons provided on the One Month Notice.

The landlord testified that the tenant has breached a term of the tenancy agreement by letting her boyfriend live in the unit which was intended for the tenant alone. There is a

clause in the tenancy agreement which states that the unit shall not be occupied by more than one person and only names the tenant on the agreement. The landlord seeks an Order of Possession based on this breach.

The landlord testified that the broken glass in the front door cost \$280.00 to repair. The landlord seeks to recover this cost from the tenant and has provided a copy of the invoice in documentary evidence. The landlord testified that the estimate for the ceiling repair in the restaurant has also been provided. The landlord seeks to recover the cost for this work of \$2,835.00.

The tenant disputed the landlord's claim. The tenant agreed that she withheld the rent for January, 2017 for the cost of emergency repairs. The landlord was fully aware that the plumbing required repair in the kitchen and bathroom. The tenant had waited three months for the landlord to make these repairs and had no water at these sinks. The tenant feels she gave the landlord a reasonable time to make the repairs. The shut off valve under the kitchen sink was leaking. The tenant had kept a bucket under the valve but as the pressure built up the bucket started to overflow and the leak became worse. The tenant testified that she called the landlord to ask her to send a plumber but the landlord became argumentative. At this point the tenant called a plumber and at no time did the landlord request to take over the repair. The landlord was given an account of the repairs and the invoice. The invoice for this work to repair the shut off valve and replace the kitchen faucets came to \$241.97.

The tenant testified that the landlord had also agreed that the tenant could do other repairs at the start of the tenancy. The landlord wanted the tenant to clean the unit and repaint it as the landlord was having some financial difficulties. The tenant kept the landlord informed of the work she was doing and everything was amicable at that time. When the landlord did not send in a plumber the tenant agreed she did become angry. The tenant provided other bills to the landlord for the following costs:

Faucet connector – \$10.74

Faucet for the bathroom - \$29.99

Showerhead and attachment \$0.36

Tape and caulk - \$7.26

Paint - \$45.08

Water proofing tub surround - \$48.42

Labour costs - \$960.00

Due to the cost of these repairs and the emergency repairs the tenant deducted these costs from her rent for January. The tenant sent copies of these costs plus her labour for doing cleaning and other work to the landlord and assumed as she got no response that the landlord accepted these costs towards her rent

The tenant disputed the One Month Notice. The tenant testified that she did not cause damage to the front door. The tenant explained that she had some of her ex-boyfriends belongings in her unit and when he arrived she told him he could not come in but she would bring his belongings down to him. They started to argue and he slammed the door and the glass broke. The tenant testified that the glass in the door was loose and rattled and it cracked in the top corner when the door was slammed. The tenant disputed that she caused the damage to the ceiling in the landlord's restaurant as explained above. The tenant disputed the landlord's photographic evidence and testified that the staining shown on the ceiling is not on the area of the ceiling located under the tenant's unit. The water was only a small amount around a milk carton full which split out of the bucket used under the shut off valve when the tenant moved it. This ceiling already had water damage marks on it from before the tenant moved in.

The tenant agreed that she did not pay a security deposit to the landlord but testified that she could not move into the unit on October 01, 2016 due to its condition and could not move in until October 31, 2016. The tenant testified that she had paid the rent for October and that this rent should be applied to the security deposit. The tenant testified that the landlord was having the flooring replaced so the tenant could not move her belongings into the unit until after this was completed on October 26, 2016 as it is a small space.

The tenant testified that she was not aware that she had to file her application within five days to dispute the 10 Day Notice and within 10 days to dispute the One Month Notice. The tenant testified that she did not read the tenant's information on the second page of the Notices. The tenant seeks to have the Notices cancelled and for the tenancy to continue.

The tenant disputed the landlord's claim for an Order of Possession based on a breach of the tenancy agreement. The tenant testified that her ex-boyfriend has never lived with her in the unit.

The tenant disputed the landlord's claim for unpaid rent for January, 2017. As the landlord owes the tenant money this should be applied to any unpaid rent.

The tenant seeks to recover the following amounts from the landlord:

Rent for October \$650.00

Emergency repair - \$241.97

Plumbing supplies - \$55.06

Paint – \$45.08

Repair and plumbing items – \$48.42

Labour for cleaning and repairs – 960.00.

The landlord agreed that the tenant is entitled to recover the following costs from the landlord:

Emergency repair - \$241.97

Plumbing supplies - \$55.06

Paint – \$45.08

Repair and plumbing items – \$48.42

Labour for cleaning and repairs – 960.00.

The landlord disputed the tenant's claim to recover rent for October as the landlord has testimony from the flooring company that the tenant was living in the unit when they came to put the flooring down.

The tenant disputed the landlord's testimony and testified that she only came to the unit to let the flooring company in to lay the floors there was no furniture in the unit at that time and it does not state that there is in this letter from this flooring company.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the tenant's application for more time to file an application to dispute the Notices to End Tenancy; I refer the parties to s. 66(1) and 66(3) of the *Act* which state:

66 (1) *The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review].*

(3) *The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.*

The tenant stated that she had not read the second page of the Notices; however, not knowing the applicable law or procedure or not paying attention to the correct procedure is merely an excuse. I must therefore conclude that the tenant has insufficient evidence to show any exceptional circumstances as to why she did not file her application to dispute the Notices within the time frame and the 10 Day Notice was not disputed until after the effective date of the Notice. The tenant's application for more time to file an application to dispute the Notices is therefore dismissed.

With regard to the landlord's application for an Order of Possession— I find the tenant did not apply to dispute the 10 Day Notice or the One Month Notice within the allowable time frame of five days and ten days. I refer the parties to s. 46(4) and 46(5) of the *Act* which states:

46(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

46(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I also refer the parties to s. 47(4) and 47(5) of the Act which states:

47(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

47(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

With this in mind I have considered the tenant's testimony that she withheld rent for the cost of emergency repairs. Under s. 33 of the Act a tenant may only withhold rent for emergency repairs if the tenant has complied with this section of the Act and the repairs can be regarded as emergency repairs according to s. 33 of the Act. While I accept that

plumbing repairs done to an amount of \$241.97 did fall under the category of emergency repairs I do not find that the other repairs and cleaning completed by the tenant fall under this category.

Consequently I find the tenant was entitled to withhold \$241.97 from January, 2017 rent but the remainder of the rent of \$408.03 remained outstanding at the time the 10 Day Notice was served upon the tenant. The tenant did not pay this rent and did not file her application to dispute the 10 Day Notice within the five allowable days. The tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice and should have vacated the rental unit by that date.

With regard to the One Month Notice, regardless of the reasons provided on the One Month Notice the tenant did not file her application to dispute this Notice within the 10 allowable days. The tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of this Notice and should have vacated the rental unit by that date.

I therefore find in favour of the landlord's application for an Order of Possession based on these Notices to End Tenancy. The landlord requested an Order of Possession for March 31, 2017 and I therefore allow this request.

As the landlord has been issued an Order of Possession based on the Notices to End Tenancy I am not required to deal with the landlord's application for an Order of Possession because the tenant has breached an agreement with the landlord.

The tenant's application to cancel both Notices is therefore dismissed.

With regard to the landlord's application to recover a loss of rent for January, 2017, As I have found the tenant is entitled to withhold the amount of \$241.97 from January's rent for emergency repairs then I find in partial favor of the landlord's claim to recover the balance of rent owed of **\$408.03**.

With regard to the landlord's application for a Monetary Order for damages to the door; I have considered the evidence before me and I am satisfied that the tenant or a guest of the tenant slammed the front door with enough force to break the glass. Under s. 32(3) of the *Act* a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. As the tenant did not repair this damage I therefore allow the landlord's claim to recover the cost for the repair to the door of **\$280.00**.

With regard to the landlord's application for a Monetary Order to recover the cost to repair the ceiling in her restaurant; I am not satisfied from the evidence before me that this damage was caused solely through the actions or neglect of the tenant and that the landlord should have some responsibility for any water leaking as she did not make repairs to the plumbing or maintain the plumbing in the unit after she was notified it was defective three months prior to this water leak from the shut off valve. The landlord has insufficient evidence that this damage was caused by the tenant's plumber changing the faucets and insufficient evidence that the location of the water leak is directly under the tenant's unit. Consequently, the landlord's application to recover \$2,835.00 is dismissed.

With regard to the tenant's application to recover costs incurred to carry out cleaning and repairs in the unit. The landlord has agreed at the hearing that the tenant is entitled to recover a total cost of **\$1,108.56** for the repairs and cleaning which included the tenant's labour costs of \$960.00 but does not include the emergency repairs as they have been dealt with above under the landlord's claim for unpaid rent.

With regard to the tenant's claim to recover rent for October, 2017, I am satisfied with the evidence before me and find on a balance of probability that the tenant was unable to move into the rental unit during the month of October, yet had paid rent for the unit of \$650.00. The letter from the flooring company does not state that the tenant was moved into the unit only that she was there when they did the flooring. I prefer the tenant's testimony that she was there as she had to let the men in to lay the flooring and could

not have brought her belongings into the unit prior to the flooring going down as they would not have had space to lay the floor. A landlord must ensure a rental unit is ready for occupation by the date shown on the tenancy agreement and clearly in this case it was not. I therefore find in favor of the tenant's application to recover rent paid for October of **\$650.00**

As both parties monetary claims have merit, I have offset the landlord's monetary award against that the tenants. A Monetary Order has been issued to the tenant for the following amount:

Unpaid rent for January to the landlord	\$408.03
Damage to the front door	\$280.00
Amount due to the landlord	\$688.03
Recovery of rent for October for the tenant	\$650.00
Repairs and cleaning carried out by tenant	\$1,101.85
Amount due to the tenant	\$1,751.85
Offset landlord's claim against tenants	(-\$688.03)
Total amount due to the tenant	\$1,063.82

As both parties claims have merit I find the landlord must bear the cost of filing her own application.

Conclusion

The landlord has been issued an Order of Possession effective **on March 31, 2017** pursuant to section 55(1) of the *Act*. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlord then the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to recover the amount of \$688.03. This amount has been offset against the tenant's monetary claim as indicated above.

The remainder of the landlord's application is dismissed without leave to reapply.

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,063.82**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The remainder of the tenant's application is dismissed without leave to reapply.

As this tenancy will end the remainder of the tenant's application not heard today is dismissed without leave to reapply pursuant to the RTB Rules of Procedure 2.3. 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: February 22, 2017

Residential Tenancy Branch

