

## **DECISION**

### **Dispute Codes**

LANDLORD: OPR

TENANT: CNR, MNR, MNDC, RP, LRE, RR

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking to end the tenancy and for an Order of Possession.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy and if successful; for the Landlord to do repairs to the unit, site or property, to restrict the Landlord's right of entry to the rental property, for compensation for the cost of repairs and for loss or damage under the Act, regulations or tenancy agreement and for a rent reduction.

Service of the hearing documents by the Landlord to the Tenants were done by personal delivery on May 31, 2017 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on May 12, 2017 in accordance with section 89 of the Act.

Both parties confirmed receiving the other parties hearing package.

### **Issues to be Decided**

Landlord:

1. Is the Landlord entitled to an Order of Possession?

Tenant:

1. Are the Tenants entitled to an Order to cancel the Notice to End Tenancy?
2. Are the Tenants entitled to compensation for cost of repairs or loss or damage and if so how much?
3. Are there repairs to be completed in the rental unit?
4. Are there grounds to restrict the Landlord's right of entry into the rental unit?
5. Are the Tenants entitled to a rent reduction?

### Background and Evidence

This tenancy started on July 15, 2016 as a verbal month to month tenancy. Rent is \$1,100.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$550.00 at the start of the tenancy.

The Landlord said that the Tenants did not pay rent of \$550.00 representing half the monthly rent for the month of May, 2017, when it was due and as a result, on May 10, 2017, the Landlord personally delivered a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 10, 2017 to the Tenants at the rental unit. The Landlord continued to say that the Tenant has not paid the June, 2017 rent as well in the amount of \$1,100.00. Further the Landlord said the Tenant advised the Landlord of a mould problem on April 20, 2017 and the Landlord had a renovation company look at the mould issue on April 22, 2017 and an insurance adjuster viewed the mould issue on May 10, 2017. The Landlord said the mould issue may cost \$30,000.00 to \$50,000.00 to repair and it will not be covered by insurance. The Landlord said the Tenants did not tell the Landlord about the mould issue until April 20, 2017 and the adjuster said the mould issue started many months ago. The Landlord said if the Tenant had mentioned the mould issue it would have been a much less costly to repair. The Landlord said the mould is not the issue here, the issue is that the Tenants have unpaid rent and the Landlord wants to end the tenancy because of the unpaid rent.

The Tenant said on April 20, 2017 she wrote the Landlord a letter about the mould issue and then the Landlord agreed that the Tenant could pay 1/2 a months rent for May, 2017 in the amount of \$550.00. The Tenant said the Landlord does not provide rent receipts so she has no evidence to support this rent reduction agreement.

The Landlord said there was no agreement about reducing the rent for May, 2017 and the Tenant should have paid the \$550.00 when she received the 10 Day Notice to End Tenancy for Unpaid Rent on May 10, 2017.

The Tenant continued to say the Landlord said he would not accept the June, 2017 rent because the Landlord said they were evicting the Tenants.

Further the Tenant said she is requesting \$9,438.00 as compensation for the unhealthy conditions in the rental unit because of the mould issues. This amount represents the rent paid by the Tenant over the tenancy. As well the Tenant said she is requesting a rent reduction if the tenancy continues, that the Landlord repair the mould issue and that the Landlord is ordered to provide proper 24 hour Notice when entering the rental unit in the future. The Tenant continued to say she has not incurred any expenses in repairing the rental unit to date.

The Tenant said in closing that the rental unit is unhealthy and they will have to move if the repairs are not completed and the mould issue is not corrected. As well the Tenant said she believes the Landlord is trying to evict her so they can repair the unit without the Tenants in the unit. The Tenant said she needs time to find another rental unit if she is moving out.

The Landlord said in closing that the Tenant has unpaid rent and that is grounds to evict a tenant. The Landlord inspected the mould issue as soon as they knew about it and now they are taking the correct steps to repairing the damage to the rental unit and to resolve the mould issue. The Landlord said they want to end the tenancy as soon as possible because the Tenants have not paid the rent due.

### Analysis

Section 26 (1) of the Act says 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

The Tenant said that there was an agreement with the Landlord that the May, 2017 rent was reduced to \$550.00. The Landlord said there was no agreement to reduce the May, 2017 rent and that is why they issued the 10 Day Notice to End Tenancy for unpaid rent. As well the Landlord said the Tenants had 5 days to pay the rent after receiving the Notice to End Tenancy if she wanted to continue the tenancy. The Landlord said the Tenant did not pay the unpaid rent. There is no evidence submitted to corroborate an agreement was made to reduce the May, 2017 rent to \$550.00. The burden of proving a claim lies with the applicant and when it is just the applicant's word against the respondent's word that burden of proof is not met. I accept the Landlord's testimony that there was no agreement to reduce the rent for the month of May, 2017 to \$550.00. As a result the Tenant has unpaid rent for May, 2017 in the amount of \$550.00 and for June, 2017 in the amount of \$1,100.00. Consequently, I find that the Tenant has not paid the overdue rent; therefore I dismiss the Tenant's application dated May 11, 2017 to cancel the 10 Day Notice to End Tenancy for unpaid rent. Further as the Landlord has been successful in her application to end the tenancy and pursuant to section 55 of the Act; I grant the Landlord an Order of Possession to take effect 48 hours after service of it on the Tenants.

With respect to the Tenants' request for compensation of \$9,438.00 which represents the rent paid over the tenancy; I find the Tenant had use of the rental unit and made no efforts to inform the Landlord of any issues with mould until April 20, 2017; therefore I find the Tenant has not established grounds to proof her monetary claim. I dismiss the Tenant's monetary claim for \$9,438.00 for lack of evidence.

Further as the tenancy is ending I dismiss the Tenant's claims for repairs to the unit, for a rent reduction, to restrict the Landlord's right of entry and for the cost of repairs as the Tenant said she did not incur any costs for repairs.

I dismiss the Tenant's application without leave to reapply.

### Conclusion

The Tenants' application is dismissed without leave to reapply.

An Order of Possession effective 2 days after service of it on the Tenants has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia.

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, 2017.

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Residential Tenancy Branch