



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: CNR, MNDC, OLC, PSF, RR, RP, FF
Landlord: OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross- applications by both parties pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows. The tenant applied June 23, 2017 to:

1. Cancel a Notice to End for Unpaid Rent - Section 46
2. A Monetary Order for Loss – Section 67
3. For the landlord to comply with the Act - Section 62
4. Authority for the tenant to reduce rent – Section 65
5. For the landlord to make repairs to the unit – Section 62
6. An Order to recover the filing fee for this application - Section 72

The landlord applied June 26, 2017 for:

1. An Order of Possession due to unpaid rent - Section 55
2. A Monetary Order for unpaid rent / loss - Section 67
3. To retain the security deposit in partial satisfaction of the claim – Section 38
4. An Order to recover the filing fee for this application - Section 72

Both parties attended the hearing and were given opportunity to present *relevant* evidence and *relevant* testimony in respect to their claims and to make *relevant* prior submission to the hearing and participate in the conference call hearing. Neither party effectively provided written evidence to this proceeding; however it is acknowledged the landlord provided a copy of the tenancy agreement and a copy of a 10 Day Notice to End Tenancy document previously ascribed to a Direct Request application. The parties were given opportunity to mutually resolve their dispute to no incomplete avail.

However, the parties determined and mutually agreed to end the tenancy at the end of August 2017. As a result portions of the tenant's application not associated with a surviving tenancy are rendered moot as no longer relevant. Prior to concluding the hearing both parties acknowledged presenting all the *relevant* evidence they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started November 01, 2016. Rent in the amount of \$3000.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$1500.00 which they retain in trust. The tenant placed a stop payment on June 2017 rent effectively failing to pay rent in the month of June 2017 which resulted in the landlord serving the tenant with a notice to end tenancy for non-payment of rent on June 16, 2017 stating the tenant owed rent of \$3000.00. The tenant applied to dispute the notice but did not satisfy the rent for June 2017. The tenant acknowledged that the landlord holds cheques for July and August 2017 which have not been cashed and claims they remain valid and negotiable instruments. The landlord acknowledged they have the referenced cheques but is hesitant to transact them as they lack trust in the tenant. As a result the parties agree that despite the above rent totalling \$9000.00 has not been wholly satisfied.

The parties agreed to their respective preference to end the tenancy. The parties agreed and individually confirmed that the tenancy will end August 31, 2017 and that the landlord will receive an Order of Possession to reflect this agreement. The parties further agreed and confirmed the landlord is owed unpaid rent in the sum of \$9000.00.

The tenant acknowledges having 4 roommates occupying the rental unit. The tenant claims the landlord's intrusive conduct contributed to one of the tenant's friends no

longer occupying the rental unit and consequently vacating. The tenant claims having to augment their friend's portion of the rent in the amount of \$800.00, as well as the friend's costs to pay for the building's amenities in the amount of \$320.00. The landlord did not effectively dispute the tenant's claims they were intrusive in some of their behaviours.

The tenant claims the rental unit oven did not operate as intended, for which the tenant seeks \$400.00. The landlord claims they had the oven repaired in early January 2017 for which they have but did not submit an invoice.

The tenant claims the landlord did not provided 'special lightbulbs' promised at the outset of the tenancy until April 2017. The landlord claims they did not receive notification of the referenced light bulbs sooner than when they were provided.

The tenant claims the washing machine is faulty and has damaged towels and linens as a result. The landlord claims they informed the tenant to get the machine repaired at their convenience and deduct any cost from the rent.

In addition, the tenant claims the landlord's inappropriate conduct caused a loss of quiet enjoyment, and a visit to their doctor, and that their vacation plans were thwarted, and "on hold".

Analysis

On preponderance of the evidence I find as follows.

Section 26 of the Act in relevant part states;

Rules about payment and non-payment of rent

- 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.

I find I have not been presented with evidence the tenant had a legal right under the Act to deduct all or a portion of the rent. But regardless, the parties agreed the landlord is

owed any unpaid rent and that the tenancy is coming to an end. Based on the above facts I find it appropriate to grant the landlord an Order of Possession. The parties argued in respect to the effective time of such an Order to no avail.

I find that the landlord has established a monetary claim for unpaid rent for June 2017, and, for July and August 2017 to the extent they are not able to successfully transact cheques in their possession for these 2 months.

In the presence of contrasting evidence from the landlord, but moreover in the absence of sufficient evidence from the tenant in support of their monetary claims, I find the tenant has not established entitlement to their request for monetary compensation. None the less, on the balance of probabilities, I find the landlord may have breached the tenant's right to quiet enjoyment. As a result, I grant the tenant *nominal compensation* in this regard in the amount of \$300.00.

The security deposit will be off-set from the award made herein. As both parties were partially successful in their applications any respective entitlement to recovery of filing fees cancel.

Calculation for Monetary Order

Landlord: Unpaid rent for June, July and August 2017	\$9000.00
Tenant: loss - nominal	-\$300.00
<i>Less tenant's security deposit in trust</i>	<i>-\$1500.00</i>
Total Monetary Award / landlord	\$7200.00

Conclusion

So as to perfect the parties' agreement **I grant an Order of Possession** to the landlord **effective August 31, 2017**. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I Order that the landlord retain the security deposit of \$1500.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance

due of **\$7200.00**. If the tenant does not satisfy this Order the Order may be filed in the Small Claims Court and enforced as an Order of that Court.

I Order the landlord must deduct from the Monetary Order any amount they may have already received from the tenant or any amount realized from the transaction of cheques in their possession. **I Order** that the Monetary Order granted in this proceeding is rendered in force and enforceable for solely the balance of any unpaid rent.

The parties' respective applications are, in their relevant parts, granted.

This Decision is final and binding on both parties.

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: August 29, 2017

Residential Tenancy Branch