



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF; CNR, MNDC, OLC, ERP, RP

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent or utilities, pursuant to section 55;
- a monetary order for unpaid rent or utilities, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 2, 2018, ("10 Day Notice"), pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlords to complete emergency and regular repairs to the rental unit, pursuant to section 33.

The two landlords, male landlord ("landlord") and "female landlord," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The female landlord did not testify at this hearing and the male landlord acted as her agent. This hearing lasted approximately 40 minutes in order to allow both parties to negotiate a partial settlement of their applications and to provide full submissions regarding the remainder claims.

The hearing began at 9:30 a.m. with me and the two landlords present. The tenant called in late at 9:32 a.m. with two of her witnesses. The landlords disconnected from

the conference and rejoined immediately at 9:32 a.m. in order to remove their telephone from speakerphone because it was causing echoing and feedback on the line, making it difficult for me to hear. No testimony was taken from the two landlords in the tenant's absence.

The tenant intended to call three witnesses at the beginning of the hearing, two of whom called into the conference. All witnesses were excluded from the outset of the hearing. When I questioned the tenant later in the conference as to whether she wanted to call her three witnesses, she affirmed under oath, that she no longer wanted to call them.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Both parties agreed to settle their applications, except they were unable to settle the tenant's monetary claim for \$10,000.00, so I made a decision regarding this claim only.

Settlement of Some Issues

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of portions of their dispute.

Both parties agreed to the following final and binding settlement of portions of their dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on April 27, 2018, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlords agreed that their 10 Day Notice, dated February 2, 2018, is cancelled and of no force or effect;
3. The tenant agreed to pay the landlords rent of \$2,670.00 for the period from February 1 to April 30, 2018, at a rate of \$890.00 per month;
4. The landlords agreed to provide the tenant with official copies of the hydro and gas bills for the rental unit for the period from August 2017 to March 2018, by April 17, 2018, and the tenant agreed to pay the landlords 50% of the cost of all of the above bills as required by her written tenancy agreement;

5. The landlords agreed to bear the cost of the \$100.00 filing fee paid for their application;
6. Both parties agreed that this settlement agreement constitutes a final and binding resolution of their applications at this hearing, except for the tenant's monetary claim for \$10,000.00.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties, except for the tenant's monetary claim for \$10,000.00. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute, except for the tenant's monetary claim for \$10,000.00.

I made a decision regarding the tenant's monetary application for \$10,000.00 because the parties were unable to reach a settlement on that issue.

Analysis of Tenant's Monetary Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenant's application for \$10,000.00, without leave to reapply. The landlord disputed the tenant's claim. The tenant stated that she suffered a slip and fall at the rental property because the landlords failed to clean snow and ice. She said that she hit her head, went to see the doctor and was prescribed medications. The tenant claimed that her three friends, who are not medical doctors, but the witnesses that she chose not to call later in the hearing to testify, knew about her slip and fall and the effects on her life. The tenant said that she did not have enough time to gather all of her medical records in time for this hearing, despite the fact that she filed her own application on

February 8, 2018 and had until this hearing date of April 17, 2018, over two months later, to prepare for this hearing.

The tenant was unable to justify the \$10,000.00 amount being claimed. I find that the tenant did not provide sufficient documentary proof of her claims. She did not provide doctor's clinical records, medical reports, medication receipts or other such documents to indicate that she suffered any kind of medical conditions or injuries and paid for treatment or medication, as a result of the landlords' negligence or actions. She provided a copy of a note from a doctor as well as a prescription. Both notes did not indicate that the landlords' actions or negligence caused any injury to the tenant or that the tenant slipped and fell at the rental property. The tenant provided photographs and videos of water inside her rental unit and ice and snow outside the rental unit. These do not prove that she fell due to the landlords' actions or negligence and that she suffered injuries and required treatment or medication as a result. I find that the tenant failed parts 1 and 3 of the above test.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlords **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on April 27, 2018. The tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on April 27, 2018. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlords' 10 Day Notice, dated February 2, 2018, is cancelled and of no force or effect.

I issue a monetary Order in the landlords' favour in the amount of \$2,670.00. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

As notified to the landlord during the hearing, the landlords may file a future application to obtain a monetary order against the tenant, pursuant to condition #4 of the above settlement, for the gas and hydro costs, if the tenant fails to pay and once a specific amount has been ascertained.

I order the landlords to provide the tenant with official copies of the hydro and gas bills for the rental unit for the period from August 2017 to March 2018, by April 17, 2018. I order the tenant to pay the landlords 50% of the cost of all of the above bills as required by her written tenancy agreement.

The landlords must bear the cost of the \$100.00 filing fee paid for their application.

The tenant's monetary application for \$10,000.00 is dismissed without leave to reapply.

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: April 17, 2018

Residential Tenancy Branch