



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL; CNR, MNRT, MNDCT, OLC, PSF, RR

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for his application, pursuant to section 72.

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 2, 2018 ("10 Day Notice"), pursuant to section 46;
- a monetary order for the cost of emergency repairs and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The landlord, the tenant and the tenant's agent 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 landlord confirmed that he was the manager for the rental unit and he had permission to speak on behalf of the owner of the rental unit, as an agent at this hearing. The tenant confirmed that her agent had permission to speak on her behalf at this hearing. This hearing lasted approximately 79 minutes.

The tenant's mother called into the hearing as a witness and was excluded from the outset, as witnesses cannot hear parties' testimony during the hearing. The tenant's mother also confirmed that she was busy taking calls at work and could not wait on the line at the hearing to assist the tenant. I notified the tenant that she could recall her mother later during the hearing as a witness. The tenant did not recall her mother as a witness later during the hearing, after I asked if there were any further submissions or questions from the tenant, prior to closing the hearing.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The tenant testified that she mailed her application for dispute resolution hearing package to the landlord on November 7, 2018, but it was returned to sender. The tenant provided a photograph of the mail envelope with the landlord's name, address and Canada Post tracking number with her application. The tracking report indicates that the mail was sent to the landlord and was returned to sender as unclaimed, despite the fact that there was a delay due to the Canada Post labour strike. The landlord confirmed that the address for service was correct but he did not receive the mail, probably because it was a small shared mailbox and the notice may have been lost. He stated that he did not provide any other address for service to the tenant. The landlord agreed that he received the tenant's application for dispute resolution and notice of hearing from the Residential Tenancy Branch, not the tenant, but he did not receive the tenant's written evidence package.

In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application, including her written evidence package, on November 12, 2018, five days after its registered mailing. I notified both parties that I would consider the tenant's application and written evidence package at the hearing and in my decision because the tenant sent it using an approved registered mail method under section 89 of the *Act*. The tenant sent the mail to the landlord's service address, attempted mail delivery was made in a timely manner despite the labour strike, and the landlord did not provide any other address for service to the tenant.

The tenant confirmed receipt of the landlord's 10 Day Notice on November 2, 2018 by posting to her rental unit door, which the landlord confirmed was completed on the above date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on November 2, 2018.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for his application?

Is the tenant entitled to a monetary order for the cost of emergency repairs and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to provide services and facilities required by law?

Is the tenant entitled to an order to allow her to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2018. Monthly rent in the amount of \$900.00 is payable on the first day of each month. A security deposit of \$450.00 and a pet damage deposit of \$450.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession for unpaid rent against the tenant. The landlord claimed that he issued the 10 Day Notice for unpaid rent of \$900.00 due on November 1, 2018. The landlord claimed that no rent has been paid by the tenant from November to December 2018, totalling \$1,800.00. The landlord seeks a monetary order for \$1,800.00 plus the \$100.00 filing fee for his application.

The tenant seeks to cancel the landlord's 10 Day Notice. The tenant agreed that rent was unpaid from November to December 2018. She stated that she attempted to pay for November 2018 rent by e-transfer, as verbally agreed by the owner's son, but the landlord refused it. The landlord agreed that he refused the e-transfer on October 26, 2018 because he said the owner's account is not set up for e-transfer, and the landlord could not personally accept the tenant's rent because he was not the owner. Both parties agreed that the tenant cancelled the e-transfer on November 1, 2018 and did not make any other attempts to pay rent for November or December 2018 to the landlord. The tenant explained that when she went to speak to the landlord about the rent he "blew up in my face."

The landlord stated that the tenant was told at the beginning of the tenancy that she could pay rent by cash or cheque, and that the company name would be provided for cheques if required and requested by the tenant. Both parties agreed that the tenant paid rent by cash throughout her tenancy from August to October 2018, while receiving rent receipts from the landlord each time. The tenant claimed that she no longer wanted to pay rent in cash because it was too expensive to withdraw money from the ATM. She said that the landlord did not give her the name of the company to address any rent cheques to, and that she had to order more cheques anyway. She stated that she was waiting for this hearing to take place before paying rent and that the landlord owed her money for the lack of stove in her unit and failure to do pest control.

The tenant requests the landlord to complete pest control for cockroaches and other rodents in the unit. She also requests the landlord to inspect the roof leak, that occurred while the parties were in the hearing. She requests an order that the landlord not enter her unit randomly and take photographs.

The tenant also seeks a monetary order of \$1,960.00. She said that she paid for pest control of \$160.00 because the landlord failed to complete it. She provided an invoice for \$154.88. She stated that the landlord owed her two months of rent at \$1,800.00 because she had no stove in her rental unit during that time. She claimed that the stove was outside the rental unit when she began renting, the landlord refused to move it in, and she had to move it in herself when she could no longer afford to eat out for her and her daughter. The tenant's agent said that it became a "joke" with the other rental building residents that the stove was sitting outside and the landlord would not move it into the tenant's rental unit. The tenant said that her bank statements would show the amount she spent to eat out, but she did not submit these statements for the hearing.

She maintained that she made daily requests to the landlord beginning on the day she moved in on August 1, 2018, to move the stove into the rental unit but he failed to do so. The landlord disputes the tenant's orders and monetary claims. He stated that the tenant is not entitled to pest control treatments because the tenant's lack of cleanliness in leaving dirt, food and garbage all over the rental unit were the reason why any pests and rodents may have come in and any pest control cannot be effective until the tenant maintains a standard of cleanliness. He said that he has done numerous inspections of the rental unit and it has always been dirty. He maintained that he was ready to move the stove into the rental unit but the tenant wanted instead to install a washer and dryer with hookups. He claimed that if the tenant changed her mind about the washer and dryer, she did not inform him that she wanted the stove put into her unit, otherwise he would have done it. He pointed to one of the tenant's online social media posts indicating she wanted to "piss off" her landlord by moving the stove into her unit on her own at 1:30 a.m. The landlord said that the tenant does not use her stove anyway, as she eats out and the food delivery services often come to his door asking for the tenant.

Analysis

Landlord's Application

The tenant failed to pay the full rent due on November 1, 2018, within five days of receiving the 10 Day Notice. The tenant made an application pursuant to section 46(4) of the *Act* on November 2, 2018, within five days of receiving the 10 Day Notice. However, the tenant failed to pay the full rent to the landlord, despite the fact that she knew the landlord could not accept her e-transfer. The owner's account is not set up with e-transfer, only the landlord's personal account is, although he is not entitled to personally receive money for rent since he is not the owner. The tenant was unable to provide a date of her verbal agreement with the owner's son or any written evidence from him to show the agreement for e-transfer.

Further, the tenant was notified at the beginning of the tenancy that she could pay by cash or cheque, and she did not inquire with the landlord about the name of the company to include on a rent cheque. The tenant previously paid with cash and received rent receipts from August to October 2018, with no issue. The tenant also could have paid by money order or certified cheque, which are equivalent to cash. However, the tenant did not make any other efforts to pay November 2018 rent and did not attempt to pay the December 2018 rent.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay full rent within five days led to the end of this tenancy on November 12, 2018, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by November 12, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the tenant failed to pay rent of \$900.00 to the landlord for each month from November to December 2018, totalling \$1,800.00. Although this hearing occurred on December 11, 2018, I find that rent was due on December 1, 2018. I find that the landlord will likely not be able to rent this unit to any new tenants for December 2018, as the tenant is still occupying the rental unit and the landlord may need to enforce the order of possession.

The landlord continues to hold the tenant's security deposit of \$450.00 and pet damage deposit of \$450.00. Over the period of this tenancy, no interest is payable on the deposits. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security and pet damage deposits, totalling \$900.00, in partial satisfaction of the monetary award. I issue a monetary order of \$1,000.00 to the landlord for the balance owing by the tenant.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

Tenant's Application

Since this tenancy is ending, I dismiss the tenant's application for an order for the landlord to provide pest control services and inspect the roof leak, without leave to reapply.

I dismiss the tenant's monetary claim for pest control of \$160.00, without leave to reapply, because the tenant failed to provide a receipt to prove that she paid this amount. She provided an invoice for \$154.88 but not a receipt to show how much she may have paid for the work to be done.

I dismiss the tenant's monetary claim and rent reduction for two months' rent of \$1,800.00, without leave to reapply. I find that the tenant failed to justify the above amount. I find that the tenant lived in the rental unit during the time that she claimed she had no stove. Therefore, she had use of her unit and is not entitled to a full refund of her rent. Further, I accept the landlord's evidence that he was not alerted by the tenant that she required her stove to be moved into the rental unit from outside, when she decided to forego the washer and dryer hookups that she initially wanted.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the tenant's entire security and pet damage deposits totalling \$900.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$1,000.00 against the tenant. 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.

The tenant's entire application 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: December 12, 2018

Residential Tenancy Branch