



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LANDLORD: OPC, MND, MNSD, FF
TENANT: CNC, ERP, OLC, RP, FF

Introduction

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

The Landlord filed seeking an Order of Possession, a monetary order for damage to the unit site or property, to retain the security deposit and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy and if successful; for the Landlord to do emergency repairs and general repairs to the unit, site or property, for the Landlord to comply with the Act, regulations and tenancy and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on September 26, 2019 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on or about October 17, 2019. The Tenant was unsure of the mailing date, but the Landlord confirmed receiving the hearing package.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to compensation for damage to the unit site or property and if so how much?
3. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Are there emergency repairs required to the unit?
3. Are there general repairs required to the unit?
4. Has the Landlord complied with the Act, regulations and tenancy agreement?

Background and Evidence

This tenancy started on January 15, 2016 as a fixed term tenancy for one year. This tenancy was renewed with fixed term tenancy agreements until July 31, 2019 at which time the tenancy continued on a verbal month to month basis. Rent is \$1,652.00 per month payable on the 15th day of each month. The Tenant said she believes they had a verbal agreement the rent would be paid on the 20th of each month. The Tenant paid a security deposit of \$775.00 on January 1, 2016.

The Landlord said that the Tenant caused water damage to the Tenant's unit, the unit below the Tenant's unit in March, 2019. The damage was due to a toilet overflowing and flooding the Tenant's unit and the unit below the Tenant. The Landlord said the Strata has billed the Landlord \$887.07 for the repairs that were done. The Landlord continued to say they requested the Tenant pay for the damage in a demand letter dated July 12, 2019, but the Tenant would not comply. Consequently the Landlord issued a 1 Month Notice to End Tenancy for Cause dated August 13, 2019 and served the Notice by registered mail on August 13, 2019. The Landlord submitted Canada post tracking information and a Canada Post receipt for the registered mail. The reason on the Notice to End Tenancy is that the Tenant has not done the required repairs for damage to the unit or site. The Landlord said the Strata actually did the repairs and then billed the Landlord and then the Landlord requested the Tenant to pay the invoice. The Tenant refused to pay for the water damage so the Landlord made application for the cost of the Strata repair invoice of \$887.07 and the Landlord is requesting to end the tenancy. Further the Landlord included two additional invoices for plumbing repairs dated September 21, 2019, but as the Landlord did not amend their application these claims will not be included in this application. The Landlord is at leave to reapply for these claims within the legislated time guidelines.

The Tenant said this whole process is very stressful for her and she didn't really understand what the Landlord wanted. The Tenant said her toilet has not been operating correctly for over a year as the flush does not turn off and the toilet keeps the water running. The Tenant said she believes that she and the female Landlord had a discussion about this approximately a year ago in front of the Landlord's office. Further the Tenant said the Landlord had to repair the toilet in September 2019 because the flush was not working correctly. As a result the Tenant said she thought the water overflow in March was a maintenance issue and not her fault. The Tenant said she did not think she should pay for a maintenance issue so she did not pay the Strata invoice for \$887.07.

The Tenant continued to say that she was out of the country at the end of August 2019 so she did not get the One Month Notice to End Tenancy for Cause dated August 13, 2019 until September 6, 2019. The Tenant said she found it in her mail box. The Tenant continued to say she made her application to dispute the One Month Notice to End Tenancy for Cause dated August 13, 2019 on October 8, 2019. The Tenant said there was some misunderstanding as she first applied on September 17, 2019, but that application was only for the Landlord to comply with the Act, regulations and tenancy agreement. The Tenant said she wants to continue the tenancy as it is her home and if she has to pay the Strata invoice she will. The Tenant asked that the One Month Notice to End tenancy for Cause dated August 13, 2019 be canceled and the tenancy to continue.

The Arbitrator indicated to the Tenant that on page two of the One Month Notice to End Tenancy for Cause it states in the section for Tenant Information that a Tenant may dispute a One Month Notice to End Tenancy for Cause within 10 days of receiving it and if the tenant does not then the tenant is deemed to have accepted the tenancy is ending on the effective vacancy date on the Notice to End Tenancy. In this case the effective vacancy date is September 30, 2019. The effective vacancy date on the Notice to End Tenancy is 8 days before the Tenant made her application on October 8, 2019 to dispute the Notice to End Tenancy. The Tenant's application is approximately 50 days late from the deemed date of receiving the Notice and 22 days late from September 6, 2019 when the Tenant found the Notice in her mail box.

The Tenant said in closing it is not fair to end the tenancy over an over flowing toilet that was a maintenance issue or that she may have applied to dispute the Notice to End Tenancy late.

The Landlord said in closing that they want to end the tenancy, but they are willing to extend the effective vacancy date to January 15, 2020 on the condition that the Tenant pays the December 2019 rent of \$1,652.00.

The Tenant continued to say the Landlord is trying to evict her so the Landlord can increase the rent on her unit.

The Landlord said that is not the case it is the damage issue and difficulty dealing with the Tenant that is the reason they want to end the tenancy.

Analysis

Section 47(4) of the Act states that **within 10 days of receiving** a Notice to End Tenancy for Cause, a Tenant may apply for dispute resolution. If the Tenant fails to do this, then under section 47(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit on that date.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy five days after it was sent by registered mail or on August 18, 2019. As the Tenant was out of the country and said she received the Notice to End Tenancy for Cause on September 6, 2019; I accept the Tenant received the One Month Notice to End Tenancy for Cause on September 6, 2019. Consequently, the Tenant would have had to apply to dispute the Notice by September 16, 2019.

I find that the Tenant applied to dispute the One Month Notice to End Tenancy for Cause dated August 13, 2019 on October 8, 2019. Consequently, I find the Tenant's application is late and as such I dismiss the Tenant's application to dispute the One Month Notice to End Tenancy for Cause dated August 13, 2019. I find the One Month Notice to End Tenancy for Cause dated August 13, 2019 is valid, effective and undisputed due to late filing. Pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect at 1:00 pm on January 15, 2020.

With regard to the Landlord's claim of \$887.07 for the Strata invoice to repair the water damage in the Tenant's unit and the unit below. In any toilet over flow situation there are at least two issues. First there has to be a blockage in the toilet and secondly there has to be water flowing. In this case the flush mechanism appears to have been faulty allowing water to flow. Consequently, I accept the Tenant's testimony that she had a conversation with the Landlord about the toilet continuously running prior to the incident in March 2019. Therefore, I accept this could have been a maintenance issue as the toilet had to be repaired in September 2019 for a continuous water flow issue in the flush mechanism. I dismiss the Landlord's claim for \$887.07 to recover the Strata invoice costs.

As the tenancy is ending and there was no testimony about emergency or general repairs I dismiss the Tenant's claims for repairs.

Further I order the Landlord to handle the security deposit at the end of the tenancy as required under the Act.

As neither the Landlord nor the Tenant have been fully successful in this matter I order the Landlord and the Tenant to bear the cost of the filing fee of \$100.00 that they have already paid.

Conclusion

An Order of Possession effective at 1:00 pm on January 15, 2020 has been issued to the Landlord. A copy of the Order must be served on the Tenant: 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: December 2, 2019

Residential Tenancy Branch