



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dorset Realty Group
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes MNDCT CNR RP RR FFT MNR OPR FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

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

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”). In accordance with section 89 of the *Act*, I find that both the landlord and tenant were duly served with the Applications. The tenant confirmed receipt of the landlord’s evidentiary materials. Accordingly, I find the tenant duly served

with the landlord's evidence in accordance with section 89 of the Act. The tenant did not submit any written evidence for this hearing.

At the beginning of the hearing, the tenant testified that she would be moving out by noon on March 16, 2020. Accordingly, the applications pertaining to the 10 Day Notice to End Tenancy are cancelled. As discussed in the hearing, the landlord will be provided with an Order of Possession for noon on March 16, 2020.

Although the landlord had applied for a Monetary Order of \$3,400.00 in their initial claim, since they applied another \$3,300.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$3,400.00 to \$6,700.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Are the parties entitled to the monetary orders for which they have applied?

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

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Are the parties entitled to recover the filing fees for their applications.

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on or about October 21, 2019, and was to end on October 31, 2020. During the hearing, the tenant testified that she would be moving out on March 16, 2020. Monthly rent is currently set at \$1,650.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$825.00, which the landlord still holds.

The landlord is seeking a monetary order for unpaid rent for the months of December 2019 through to March 2020. The tenant does not dispute that she has not paid any rent for these months.

The tenant is also seeking a monetary order. The tenant is requesting reimbursement of the replacement toilet seat and showerhead she had purchased in the amount of \$45.90. The tenant testified that both of these items were broken, and that the property manager had instructed her to purchase the replacements and she would be reimbursed later. The tenant testified that she was never reimbursed for the items, and she had to install them herself. The landlord testified that she did not authorize the purchase of these items.

The tenant is also seeking a rent reduction in the amount of \$2,400.00 for the inability to lock the patio door, as well as for an order for the landlord to repair the broken door. The tenant testified that she was concerned for her safety as the lock had never worked from the day she moved in, and is still not repaired. The tenant also expressed concern about the common door locks, and how secure they were. The landlord testified that although it was not disputed that the patio door has been broken since the beginning of this tenancy, the landlord does not believe the tenant is entitled to the rent reduction requested.

The landlord testified that the previous tenant did not report the broken patio door, and after the tenant reported it, the landlord did dispatch someone to fix it. After the first contractor was unable to fix the door, the landlord sent a second contractor to look at the patio door. The landlord testified that the tenant never answered the phone calls from the contractor, and this is why the matter has not been dealt with. The tenant disputes this, stating that she is not always able to answer phone calls, and no messages were left on her phone.

The landlord testified that the tenant has not suffered any real loss, nor is her safety at risk. The landlord testified that her main door is secure, and that this patio door cannot be accessed by the public or any other rental units as the tenant resides in the penthouse unit, and is the sole unit on her floor. The landlord testified that the only way to access her patio is to climb the building.

Analysis

Section 26 of the Act, in part, states as follows:

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.

The tenant did not dispute the fact that she has not paid any rent for the months of December 2019 through to March 2020. I find that the tenant owes the landlord rent in the amount of \$1,650.00 for these four months. Accordingly, I allow the landlord a monetary order in the amount of \$6,600.00 for the unpaid rent.

The tenant made an application for monetary compensation, as well as for a rent reduction.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the

Act on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The tenant did not submit any written evidence for this hearing. In light of the fact that the landlord disputes the tenant's claims, the tenant has the burden of proof to support her claim. I find that the tenant failed to provide sufficient evidence to support that the landlord had authorized the reimbursement of the cost of replacing the toilet seat and showerhead. Furthermore, I find that in the absence of receipts for the toilet seat and shower head, the tenant has failed to provide proof of her actual losses. On this basis, I dismiss this portion of the tenant's monetary claim without leave to reapply.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The landlord testified that she had dispatched another contractor to inspect the broken door, and the contractor was unable to reach the tenant. As the door remains broken, I order that the landlord attend to this matter within 7 days of receiving this decision by arranging a time with the tenant to allow access for repairs to be completed in accordance with the *Act*.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

The tenant requested a rent reduction in the amount of \$2,400.00. In assessing her claim, I first note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. Based on the evidence before me, I accept the fact that the door has not been fixed since the beginning of this tenancy. I find that the landlord provided some reasonable explanations for the delay such as the

inability of the first contractor to repair the door, and the inability for the second contractor to reach the tenant. I find that the tenant did their best to continue the tenancy despite the broken patio door. Although the tenant submitted that she suffered a monetary loss equivalent to \$2,400.00, I find that the tenant did not provide sufficient evidence to support the value of this loss. Although this door is an exterior door, I find that the door is not readily accessible to anyone other than the tenant. Despite the tenant's concerns about security, the tenant has not provided sufficient evidence to support the loss claimed. Accordingly, I dismiss the tenant's application for a rent reduction without leave to reapply.

As the filing fee is normally awarded to the successful party after a hearing, the tenant's application for recovery of the filing fee is dismissed without leave to reapply.

As the landlord was successful with their claim, I allow the landlord to recover the filing fee for this application.

The landlord continues to hold the tenant's security deposit of \$825.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$825.00 in partial satisfaction of the monetary claim.

Conclusion

As the tenant agreed to move out by noon on March 16, 2020, I allow the landlord an Order of Possession to the landlord for that date. Should the tenant and any occupant 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 that the landlord attend to the matter of the broken patio door within 7 days of receiving this decision by arranging a time with the tenant to allow access for repairs to be completed in accordance with the *Act*.

The tenant's entire monetary application is dismissed without leave to reapply.

I issue a \$5,875.00 Monetary Order in favour of the landlord under the following terms for recovery of the unpaid rent as well as filing fee.

Item	Amount
Unpaid Rent for December 2019 through to March 2020	\$6,600.00
Recovery of Filing Fee	100.00

Security Deposit	-825.00
Total Monetary Order	\$5,875.00

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

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: March 6, 2020

Residential Tenancy Branch