



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, OPC, FFL, MNDCT, OLC, RP, CNR, CNC, RR

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 landlords requested:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67.
- authorization to retain the tenant’s security and pet deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords’ 1 Month Notice to End Tenancy for Cause (“1 Month Notice”), pursuant to section 47;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the Ten-Day Notice and One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

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

Is the landlord entitled to retain the pet and security deposit in partial satisfaction of the claim?

Is the landlord entitled to the recovery of the filing fee?

Are the tenants entitled to an order compelling the landlord to conduct repairs to the suite?

Are the tenants entitled to an order allowing them to a rent reduction?

Are the tenants entitled to an order to compel the landlord to comply with the Act, regulation or tenancy agreement?

Are the tenants entitled to a monetary order as compensation for loss or damage under the Act regulation or tenancy agreement?

Background and Evidence

The landlord gave the following testimony. The landlord testified that the tenancy began on February 1, 2020. The landlord testified that the monthly rent of \$2200.00 is due on the first of each month. The landlord still holds the tenants \$1100.00 security deposit and \$550.00 pet deposit in trust. The landlord testified that the tenants failed to pay the rent due on May 1, 2021 and on May 2, 2021 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenants failed to pay the rent since then. The landlord seeks the five months of unpaid rent equalling \$11,000.00 plus the recovery of the \$100.00 filing fee for this application.

The tenant gave the following testimony. The tenant testified that she acknowledges and confirms that she stopped paying the rent as testified by the landlord. The tenant testified that although she does not have an order from an Arbitrator allowing her to withhold rent or the landlord's permission, she is justified in doing so. The tenant testified that the home is overrun with rats to the point where she believes she has been exposed to the Hantavirus and has impacted her health. The tenant testified that the landlord never fixes anything on the property. The tenant testified that her life is in danger everyday that she lives there due to the lack of fire safety equipment and poor electrical. The tenant testified that they have lived with rat feces and urine since December 2020.

The tenant testified that she and her husband have spent a large amount of money on the property upgrading it as if it was their own home. The tenant testified that she had a verbal agreement that the rent would be reduced for said work and believes she has a \$2800.00 credit at this time. The tenant testified that the landlord has failed in her role as a landlord in making sure the home is safe and comfortable. The tenant testified that she wants to continue living in the home but wants the landlord to conduct all repairs and have a more robust pest control plan in place.

Analysis

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

I first address the landlord's application as follows.

The landlord and tenant both confirmed that the amount of unpaid rent is \$11000.00. The landlord testified that the tenant was making excuses and lies to avoid paying the rent. The tenant testified that she was justified in withholding the rent due to the rodent infestations, lack of maintenance and cleaning to the property, the lack of heat, the threat to her personal well being due to electrical issues and not conducting repairs as required. Section 26 of the Act addresses the issue before me 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.*

In addition to the above, the tenant did not provide sufficient evidence to show that she made attempts to mitigate the issues as required pursuant to section 7(2) of the Act. Also, the tenant did not provide sufficient evidence that the landlord was reckless or negligent to have caused the issues. Furthermore, I find the tenant gave very contradictory evidence. On the one hand, she stated that "her life was in danger everyday that she lived in the unit" due to the rat infestations, exposure to possible Hantavirus, lack of fire safety equipment, rat feces and urine. The tenant described the unit as virtually uninhabitable.

But, on the other hand she stated that neighbors were impressed with how "immaculate" her home was and that she was the envy of the neighborhood. I find the tenants testimony to be illogical, contradictory, and unreliable. Her assertion that she was justified in not paying the rent was incorrect. Based on the above and the tenant's own admission of nonpayment, I find that the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenants must be served with the order of possession. Should the tenants 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.

As for the monetary order, I find that the landlord has established a claim for \$11,000.00 in unpaid rent. The landlord is also entitled to recovery of the \$100.00 filing fee. I order that the landlord retain the \$1100.00 deposit and \$550.00 pet deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$9450.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

It is worth noting that although both parties noted that they wish to address a One Month Notice to End Tenancy for Cause, neither party addressed the issue despite being given a full and ample opportunity to do so. In any event, as I have already found that the tenancy ended due to unpaid rent, I am not required to address this notice and therefore dismiss this portion from both party's application.

The tenants request for a repair order, an order for the landlord to comply with the Act, and rent reduction are dismissed without leave to reapply as I have found that this tenancy is over.

I can consider the tenants request for a monetary claim. The tenant submits that they had a verbal agreement to maintain the yard for the landlord and that she is seeking \$2800.00 for that work. The tenant testified that she made the yard beautiful, and that the landlord should pay for that work. The landlord disputes any such agreement for payment.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant was unable to provide sufficient evidence to prove what the scope of work was going to be, the frequency and payment structure. Based on the insufficient documentation and the landlord's denial of said agreement, I dismiss this portion of the tenant's application without leave to reapply.

The tenants have not been successful in their application.

Conclusion

The landlord is granted an order of possession and monetary order for \$9450.00 after retaining both deposits.

The tenant's application is dismissed in its entirety 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: September 13, 2021

Residential Tenancy Branch