



DECISION

Dispute Codes CNR, MNDCT, LRE, LAT, OLC, OPR, MNRL-S, FFL

Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Tenant on June 26, 2023, and an Application filed by the Landlords on July 18, 2023.

The Tenant applied:

- For cancellation of the 10 Day Notice to End Tenancy
- Compensation for Damage or Loss
- Conditions to be set on Landlord's right to enter rental unit
- Authorization to change lock in the rental unit
- An order for the Landlords to comply with the Act, Regulations and tenancy agreement.

The Landlords applied:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served on June 7, 2023
- A Monetary Order for unpaid rent
- To recover the Application filing fee

Preliminary Issues:

At the outset of the hearing, the Tenant indicated that she was currently residing with her son and only attending the rental unit on occasion to check on her mail and belongings. She stated that she does not wish to remain in the unit and therefore was no longer interested in disputing the 10 Day Notice. She is also not disputing the Landlords' claim of unpaid rent.

The Tenant advised that the only issue identified on her application that she wished to pursue was the one regarding compensation for damage or loss. She stated that she wished to withdraw all other issues as they will no longer be relevant due to the fact that she will be moving out.

I have dismissed each of these issues as identified on the Tenant's application accordingly.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that both the Tenant and Landlord acknowledged service of the Proceeding Package and were duly served in accordance with the Act.

Service of Evidence

- Based on the submissions before me, I find that the Tenant's evidence was served to the Landlords in accordance with section 88 of the Act.
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Issue(s) to be Decided

1. Is the Tenant entitled to compensation for damage or loss?
2. Are the Landlords entitled to an Order of Possession based on the Notice?
3. Are the Landlords entitled to a Monetary Order for unpaid rent?
4. Are the Landlords entitled to recover the filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of the Tenant, the Tenant's witness V.S., Landlord M.K.G. and the Landlord's representative J.F., but will refer only to what I find relevant for my decision.

The Tenant submitted the following evidentiary material:

- A copy of a letter of explanation addressed to the Residential Tenancy Branch outlining the Tenant's version of events leading up to and including her tenancy at her current place of residence;
- Copies of pictures of mice droppings and claimed damaged items
- Copies of text messages between the Tenant and an unidentified party.

The Landlords submitted the following evidentiary material:

- Appointment of a residential tenancy agent
- A copy of a residential tenancy agreement which was signed by the Landlord and the Tenant on April 1, 2023, indicating a monthly rent of \$3,500.00 for a tenancy commencing on March 31, 2023, and a security deposit of \$1,750.00;

- A copy of the 10 Day Notice dated July 7, 2023, for \$8,100.00 in unpaid rent. The 10 Day Notice, which was sent by registered mail on July 7, 2023, provides that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of July 18, 2023;
- Copies of the Canada Post receipts and tracking information as proof of service of the 10 Day Notice by registered mail;
- A copy of the Landlords rental ledger showing the rent owing and paid during the period May to July 2023;

The Tenant testified that she rented the unit with the understanding that she could rent some of the extra rooms to students to help cover the cost of the monthly rent as she did not have an income at the time other than what she would receive from social assistance.

The Tenant further testified that it was her understanding that the unit was in good working order and ready for occupancy on April 1, 2023. She stated that shortly after she moved in, she discovered that there was a mice infestation problem, which caused damage to her stored belongings, the shower did not function properly, the electrical outlets were not all in working order, the furnace cover was off, making it a fire hazard, and the original dishwasher was malfunctioning. She indicated that the subsequent replacement dishwasher leaked.

The Tenant indicated that she had been communicating with Landlord M.K.G. by text regarding her concerns but the issues were not being addressed. She indicated that she had brought in a student in April 2023 to help with the rent but after a few weeks the student had left due to the lack of shower facilities, and she was required to return the \$1000.00 the student had paid. She stated that she had to purchase a monthly gym membership at a cost of \$25.00 per month so that she could have access to a shower.

As a result of these issues, she stated she was unable to bring in any new roommates to help pay the rent which she was otherwise unable to pay. She stated that because the Landlords were in breach of the agreement, due to the condition of the unit, their failure to correct it and the impact it was having on her ability to secure roommates, she was within her rights to withhold rent until such time as the Landlords corrected the situation. She stated that she has experienced significant stress as a result of these inactions which have negatively impacted her health.

The Tenant was unable to provide a breakdown as to how she calculated the value of her damaged pictures and emotional well-being.

The Tenant's witness V.S. testified that she had noticed the water fluctuated between hot and cold when washing her hands in the bathroom and that some of the electrical outlets did not function properly.

Landlord M.K.G and Landlord representative J.S. testified that all amenities in the property were functioning properly and that they were not aware of any issues as identified by the Tenant.

Analysis

Is the Tenant entitled to compensation for damage or loss?

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The burden in this case is on the Tenant to provide sufficient evidence over and above her testimony.

Section 67 of the Act states in part that

"if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party"

Residential Tenancy Policy Guideline 16 provides a four-part test to determine whether compensation is warranted:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the Tenant in this case has not provided sufficient evidence to meet any of the points under this test.

In face of the Landlord's direct and opposing testimony, the Tenant has not provided evidence confirming the lack of facilities or danger to her health and safety and that the Landlord was in breach of the Act, Regulation or tenancy agreement.

The evidence the Tenant provided consisted of partly dated text messages to an unnamed party making references to facility concerns and undated pictures of mice

droppings whose date or locations could not be independently verified. In any case, the tenancy agreement provides specific methods of communication between the Tenant and the Landlord for service or other issues, one of which is not text messaging.

The Tenant did not provide supporting evidence such as gym membership receipts, property replacement costs or an emotional damage calculation to substantiate the value of each of the items she was claiming for said damages.

The Tenant accepted the tenancy agreement and the associated monthly rental costs knowing that she did not have sufficient income to cover the costs and with no guarantees that she would be able to find the additional roommates she required to meet her monthly rental obligations regardless of the condition of the unit.

If the conditions with regards to the functionality of the rental unit had been as the Tenant describes, the Tenant should have notified the Landlords of the need for repairs using a method of communication provided for in the tenancy agreement and then if the Landlords did not respond, apply to the Residential Tenancy Branch for repairs.

Based on the above I hereby dismiss the Tenant's claim for monetary compensation without leave to apply.

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Section 46 of the Act states that upon receipt of a 10 Day Notice the Tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the Tenant does not pay the arrears, or dispute the 10 Day Notice, they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

Relying on the testimony of the Tenant and the Landlord, I find that the Tenant, by her own admission, did not pay the rent due on July 1, 2023, and that the Landlord had a valid reason for issuing the notice. I deem the Tenant received the notice on July 12, 2023, the fifth day after it was sent by registered mail and had until July 17, 2023, to dispute the 10 Day Notice or to pay the full amount owing. As the Tenant did neither, the Landlord is entitled to an Order of Possession under sections 46 and 55 of the Act.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 26 of the Act states that a Tenant must pay rent to the Landlord, regardless of whether the Landlord complies with the Act, regulations or tenancy agreement, unless the Tenant has a right to deduct all or a portion of rent under the Act.

The Tenant in this case has not demonstrated that she had a right under the Act to deduct all or a portion of rent and therefore is required to pay the rent in full each month per the terms of her tenancy agreement.

I hereby grant the Landlords a monetary award in the amount of \$11,600.00 for the recovery of unpaid rent for May, June, July and August 2023. The Landlords may keep the Tenant's security deposit of \$1,750.00 per section 38(4)(b) in partial satisfaction of the outstanding rent.

Are the Landlords entitled to recover the \$100.00 filing fee?

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlords **effective two (2) days after service of this Order 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 grant the Landlords a Monetary Order in the amount of **\$9,950.00** for the recovery of rent for May, June, July and August 2023 and for the filing fee for this application. The Landlords are provided with this Order in the above terms and 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: September 05, 2023

Residential Tenancy Branch