



Dispute Resolution Services

Residential Tenancy Branch

Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPL, MNDC, RR, FF

Introduction

This hearing was convened in response to an application by the tenant and an application by the landlord. Both parties attended and participated in the hearing and provided submissions and testimony to this hearing.

The tenant's claim on application is to cancel a One (one) Month Notice to Vacate for Cause. However, this Notice is moot as a previous Two (2) Month Notice to Vacate was issued - accepted by the tenant, and also not disputed by the tenant. The tenant also claims the amount of \$700 for money owed or compensation for loss under the Residential Tenancy Act (the Act), regulation or tenancy agreement. The tenant itemizes the claim in submissions as follows:

- a). \$300 for "repairs" and other miscellaneous improvements made by the tenant.
- b). \$400 for the refund of a portion of rent for July and August 2009
(reduction in value of tenancy at \$200 per month).

The tenant also seeks a future reduction of rent for repairs, services or facilities agreed upon but not provided by the landlord.

The landlord's claim is for an Order of Possession effective September 30, 2009 based on an undisputed Two (2) Month Notice to End Tenancy for Landlord's Use with an effective date of September 30, 2009, as well as to the recovery of the filing fee for their application. The tenant does not dispute the landlord's application or the landlord's request for an Order of Possession. The tenant is vacating the rental unit on or before September 30, 2009. Therefore, based on this information, **I make a preliminary finding**, that the landlord is entitled to an Order of Possession, and this decision

proceeds on the merits of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy is for a mobile park residence which began on July 01, 2009. Rent in the amount of \$900 is payable on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$450. The tenant plans to vacate the rental unit by September 30, 2009.

The testimony and evidence forwarded by each party greatly contrasts with the other.

The tenant testified that soon after they moved into the rental unit they became dissatisfied with the residential property as they found they had to deal with some cleaning of rodent droppings, fixed a fence, fixed the stairs, fixed the windows, unplugged drains, took some measures toward control of pests and purchased a cat and have had to deal with a "poorly functioning" refrigerator in hot weather and at least one 24 hour period in which the water supply was interrupted. The tenant testified that they have been generally inconvenienced by the conditions associated with the rental unit and were unable to work out a "better deal" with the landlord in respect to the amount for rent – for which the tenant seeks a \$200 per month retroactive reduction.

Other than a written submission of their testimony, and their assertion that they provided additional evidence in the form of photographs, the tenant did not provide other substantiating or corroborating evidence to this proceeding. The tenant also stated they did not provide any of the receipts in their possession in support of their claim.

The landlord disputed all of the tenant's claims, and testified that she had not received any evidence referenced by the tenant.

Analysis

On the preponderance of the evidence before me, and on balance of probabilities, I have reached a decision.

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test for damage and loss claims as per Section 7 of the *Act*.

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

A claimant bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the damage/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 that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

The tenant's application to cancel a redundant One (1) Month Notice to Vacate is dismissed.

I find the tenant's application and claims for damage and loss do not meet the test for damage or loss claims, and **I dismiss** this portion of the tenant's claim without leave to reapply.

As the tenant is vacating the premises and it is confirmed that the tenant will receive their last month's occupancy free of any rental obligation, **I decline** to make a finding in respect to future reduction in rent and **I dismiss** this portion of the tenant's application

without leave to reapply.

I dismiss the tenant's application in its entirety. On this basis **I decline** to grant the tenant recovery of the filing fee.

The landlord is entitled to an Order of Possession effective September 30, 2009, based on an undisputed Notice to End with an effective date of September 30, 2009. As the application for the Order of Possession was made well in advance of the effective date of the Notice – with which the tenant agreed they would comply, I decline to grant the landlord recovery of the filing fee.

Conclusion

I grant an Order of Possession to the landlord. The tenant must be served with this Order of Possession. Should the tenant 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

Dated September 14, 2009.