

DECISION

Dispute Codes OPR, CNR, MNDC, LRE, LAT, RR

Introduction

There are applications filed by both parties. The Landlord is seeking an order of possession as a result of a 10 day notice to end the tenancy for unpaid rent. The Tenant is seeking to cancel the 10 day notice to end tenancy, a monetary order request for compensation for loss under the Act, regulation or tenancy agreement, to suspend or set conditions on the Landlord's right to enter the rental unit, to authorize the Tenant to change the locks to the rental unit and to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties attended the hearing by conference call and gave testimony. The Tenant stated at the beginning of the hearing that the co-tenant, J.A.L. moved out of the rental 2-3 weeks before she was served with the notice to end tenancy. The Landlord states that he has never received notice to vacate by the Tenant, J.A.L., but that the Tenant, N.A.M. is still in possession and the tenancy continues. The Landlord states that he served both parties with the notice of hearing documents on November 15, 2011 in the mail box. The Tenant, N.A.M., has confirmed that she received her package in the mail box along with the Landlord's details of dispute and evidence. The Tenant also confirms that the package for the co-tenant, J.A.L. was in the mailbox, but states that J.A.L. probably does not know of the notice as it is still in the mailbox.

The Tenant has also filed late evidence. The evidence was filed November 18, 2011 for this November 23, 2011 hearing date. I find that the late submission of evidence to be prejudicial against the Landlord as the Tenant has failed to follow the rules of procedure in that the Residential Tenancy Branch and the respondent must receive the evidence submitted at least 5 days before the dispute resolution proceeding. This late evidence package shall not be considered in this hearing.

At the beginning of the hearing it was clarified with both parties that the Tenant is withdrawing her application to cancel the notice to end tenancy for unpaid rent as she is vacating the rental unit. The Landlord requested an order of possession as per his application filed. The Tenant has confirmed in her application and direct testimony that the 10 day notice to end tenancy for unpaid rent was personally received on November 2, 2011. The Landlord's notice dated November 2, 2011 is unchallenged. The effective date noted on the 10 day notice to end tenancy is shown as November 30, 2011. Correcting the notice to 10 days after it was served on November 2, 2011 makes the

effective date November 12, 2011. The Landlord is granted an order of possession. The Tenant's application to set conditions on the Landlord's right to enter the rental unit, authorize the Tenant to change the locks and to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided shall not be considered in this hearing as the tenancy is ended.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

Both parties agreed that the furnace was shut down by Fortis BC on October 16, 2011 and a new furnace was installed on October 31, 2011. This tenancy began on May 1, 2011 on a month to month basis. The monthly rent is \$850.00 payable on the 1st of each month and a security deposit of \$425.00 was paid on May 1, 2011 as shown in the submitted copy of the Residential Tenancy Agreement.

The Tenant stated in her documentary evidence that she suffered in the rental unit due to carbon monoxide poisoning over a 6 month period. The Tenant states that she gave verbal complaints to the Landlord. The Tenant has failed to provide any evidence of carbon monoxide poisoning in the rental unit or of any notice to the Landlord to address this issue. The Tenant submitted blood test reports dated October 19, 2011 obtained from the Interior Health that state she and her family have carbon monoxide levels ranging from 3.4 to 5.7. The report states that these levels are on average with a 1-2 pack smoker with levels between 4 and 5. The report states that toxic levels begin at 20. The Landlord disputes that there is no evidence of carbon monoxide poisoning or that the Tenants suffered any illness.

The Tenant is seeking a monetary order for a total claim of \$2,848.42. The Tenant is seeking \$466.14 (pro-rated at \$850.00 per month at 31 days to equal \$27.42 per day X 17 days) for the loss of paid rent for the month of October 2011. The Tenant uses a calculation on a per diem basis for this claim. The Landlord states that he immediately supplied two oil heaters to the Tenant on October 16, 2011 when the furnace was shut off. The Tenant states that she was unable to use more than 1 oil heater at a time because the breakers would shut off. The Landlord states that the Tenant was informed to not use both heaters on the same breaker outlets and that it would trigger the breakers to shut off. The Tenant disputes this stating that she tried all the outlets without any luck.

The Tenant is seeking a claim for \$41.14 (\$75.00 pro-rated for 31 days equals \$2.42) for the loss of the gas expense from Fortis BC. The Tenant uses a per diem calculation for the recovery of this loss. The Tenant states that she is on an "Equal Billing Plan" which requires her to pay \$75.00 per month regardless of her usage. The Tenant states that she lost the use of the furnace for 17 days. The Landlord confirms this, but states that the Tenant still had use of the stove and her hot water heater.

The Tenant is seeking to claim a total of \$91.14 for hydro. \$41.14 (\$75.00 pro-rated for 31 days equals \$2.42) from lost hydro which she states she is on an "Equal Billing Plan" for \$75.00 per month which is owed regardless of usage. The Tenant uses a per diem calculation for the recovery of this loss. The Tenant states that she lost the usage of 17 days. The Tenant is also seeking \$50.00 because she claims the Landlord had placed a dehumidifier and light in the crawl space under the house.

The Tenant is seeking to claim \$150.00 for transportation costs because her own doctor was away from work and she travelled to Abbotsford from Merritt to see a doctor that she could trust.

The Tenant is seeking \$200.00 for the inconvenience of having no heat for the period between October 16 and November 1, 2011. The Landlord states that he provided two oil heaters on the same day of October 16 to offset the Tenant's inconvenience.

The Tenant is also seeking to claim \$400.00 for her moving and utility hook up costs when she vacates the rental unit.

The Tenant is claiming \$1,500.00 for compensation for being exposed to carbon monoxide and any future medical expenses.

Analysis

As both parties have attended the hearing and made reference to the evidence by each party, I am satisfied that that both have been properly served with the notice of hearing and evidence packages.

As the Tenant has withdrawn her application to cancel the notice to end tenancy for unpaid rent, the Landlord is entitled to an order of possession. The Landlord is granted an order of possession effective on the date of the notice. The effective notice date was corrected to November 12, 2011. The Tenant must be served with the 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.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the Tenant must prove her claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. With no documentary evidence to support the Tenant's claim, I'm left with just their oral testimony. I found both parties to be contradictory in their evidence and unreliable. The Tenant has failed to provide any evidence of carbon monoxide exposure. I find that the Tenant's claims for \$1,500.00 for carbon monoxide exposure compensation, \$400.00 for moving and hook up costs and \$150.00 for transportation costs to abbotsford are dismissed. The Tenant has not provided any evidence of carbon monoxide exposure. The Tenant has failed to establish her claims.

I find that the Tenant has not established a claim for the \$91.14 on the loss of hydro from this tenancy. The Tenant's claim is in dispute by the Landlord and she has not provided any evidence of hydro usage by the Landlord. This portion of the Tenant's claim is dismissed.

The Tenant's claim for the loss of heat during the period of October 16 to October 31, 2011 is a material term that was addressed by the Landlord. The Landlord has immediately addressed this issue by providing 2 oil heaters to the Tenant for this duration. The Tenant's claim of \$416.14 for no heat is based on her per diem calculation which refers to a loss of the rental unit for approximately 17 days. Although heat is considered a material term of the tenancy, the Tenant's calculations do not take into account any loss of the rental unit's other material terms. As such, I find that the Tenant did suffer an inconvenience for the loss of primary heat, but has not established a claim for the loss of use for the entire rental unit for that period of time. The Landlord's undisputed submissions state that the hot water and stove were still available. The Tenant has not provided any other submissions on loss of use. The Tenant's claim of \$416.14 and the \$200.00 (an arbitrary amount set by the Tenant) claim of an inconvenience of no heat has not been established and is dismissed. I do find however that an inconvenience took place and find that the Tenant is entitled to a nominal award of \$150.00.

The Tenant has also made a claim of \$41.14 for her Fortis BC Gas bill which is explained as an "equal billing plan" which she is charged \$75.00 a month regardless of use. I find that the Tenant did suffer a loss and that the Landlord has a duty to make

repairs and maintain the property. As such, I find that the Tenant has established a claim for the \$41.14 for her loss from her Fortis BC gas bill.

The Tenant has established a total monetary claim of \$191.14 for the inconvenience of no furnace and the loss of her paid Fortis BC gas bill.

Conclusion

The Landlord is granted an order of possession.
The Tenant is granted a monetary order for \$191.14.

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: November 24, 2011.

Residential Tenancy Branch