



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, CNR, MNDC, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlord: as an application for an Order of Possession for unpaid utilities; a Monetary Order for unpaid utilities; to keep the security deposit; and to recover the filing fee associated with this application.

By the tenant: as an application for cancellation of a 10 Day Notice to End Tenancy; and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Should the notice to end tenancy be set aside, and should the tenancy continue?

Is the tenant entitled to a Monetary Order, and if so for what amount?

Background and Evidence

The rental unit consists of the upper level of a duplex. Pursuant to a written agreement, the tenancy started on July 1st, 2012. The rent is \$980.00 per month and the tenant paid a security deposit of \$475.00.

This dispute comes at the heels of a previous decision made on November 4th, 2011, wherein the parties agreed to end the tenancy on November 30th, 2011, and a monetary order of \$209.94 was awarded to the landlord towards unpaid utilities.

The landlord's advocate's testimony was mingled with evidence already heard during the November 4th, 2011 hearing. The landlord was informed that evidence that was not previously heard, specifically that occurred after the November 4th, 2011 hearing, would be considered at this hearing.

Accordingly the landlord testified that the tenant did not pay the hydro utilities and amended her monetary claim as follows:

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| - Unpaid utilities for October-November 2011: | \$124.92 |
| - Unpaid utilities for November-December 2011: | \$ 87.82 |
| - Unpaid utilities for December 2011 to February 2012: | \$123.45 |
| - Sub-total: | \$336.19 |

The landlord stated that she gave the tenant the hydro invoices. The tenant said that the landlord lies, and also stated that the landlord tampered with a lock and related a discussion with the property manager to show how dishonest the landlord is.

The tenant testified that she did not move out as agreed because the landlord's property manager accepted rent for December 2011 and agreed that it was a difficult time of the year to find new accommodations. The tenant stated that she did not receive an invoice

for hydro, and that she wants to see the evidence before she pays. The tenant acknowledged receipt of the landlord's 10 Day Notice to End Tenancy. It was also determined at the hearing that the tenant agreed that the latest hydro invoice of \$123.45 was attached to the notice, and that the tenant did not pay the amount owing. As I could not understand the tenant's reason for not paying, the tenant's advocate clarified on tenant's behalf that under the circumstances the tenant was not sure whether the invoice should be paid.

The tenant made a claim of \$25,000.00 because she is frustrated with the landlord's lack of cooperation concerning issues with the unit; these issues were covered during the last hearing and the landlord was ordered to investigate and fix the problems, specifically with the lack of heat. The landlord stated that she did investigate as ordered, that the furnace was inspected and found to work properly. The tenant argued that the issues are not resolved yet as there is still a lack of heat.

Analysis

This tenancy should have ended on November 30th, 2011. It is clear that the parties are at odds, that the animosity has rendered communication impossible, and that it will not allow for an amiable landlord-tenant relationship.

It was not disputed that the tenant received at least one hydro invoice for \$123.45, which accompanied the 10 Day Notice to End Tenancy. Given the details and outcome of the previous decision, I find that the tenant had no excuse for not paying at least that amount. The landlord had grounds to issue the notice to end tenancy and on that basis the landlord is entitled to an order of possession.

Concerning the landlord's monetary claim; in the absence of copies of the invoices with the exception of one, I award the landlord recovery of the proven, unpaid invoice of \$123.45.

With regards to the tenant's claim of \$25,000.00 for aggravation caused by the landlord, I have found that the tenant has not provided evidence to warrant such a claim. The burden falls on the tenant to prove that the stress and aggravation would warrant compensation of such an amount. The tenant provided no supporting evidence, or that the landlord acted wilfully or recklessly, to a degree commensurate with the claim and I dismiss this aspect of the tenant's application.

Conclusion

The tenant's application is dismissed. I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$123.45. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee for a claim totalling \$173.45, which I authorize the landlord to deduct from the tenant's security deposit.

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: April 24, 2012.

Residential Tenancy Branch