Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR, OPC, OPB, MNR, MND, MNDC, MNSD, FF, O
Tenant: CNR, CNC, MNR, MNDC, ERP, RP, LRE, LAT, RR, MNSD

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, for compensation for damages to the rental unit, for compensation for damage or loss under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 20, 2012, to cancel a One Month Notice to End Tenancy for Cause dated June 5, 2012, to recover the cost of emergency repairs, for an Order that the Landlord(s) make emergency repairs or general repairs, for an Order restricting the Landlord(s) from entering the rental unit and authorizing the Tenant to change the locks, for compensation for damage or loss under the Act or tenancy agreement and for a rent reduction.

RTB Rule of Procedure 2.3 states that "if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." I find that many of the Landlords' claims are unrelated to their application for an Order of Possession and those claims (MND, MNDC) are dismissed with leave to reapply provided that they have not already been dealt with in a previous proceeding held on June 20, 2012. I also find that many of the Tenant's claims are unrelated to her application to cancel a Notice to End Tenancy and as a result, they (MNDC, ERP, RP, LRE, LAT, RR, MNSD) are dismissed on the terms set out in the Conclusion section of this Decision.

The Landlords' application named two parties as Tenants namely, E.L. and R.L. I find however, that R.L. while named on the tenancy agreement was not a signatory to it. As a result, I find that R.L. is not a party to the tenancy agreement and is not properly named as a party to these proceedings. Consequently, the style of cause is amended by removing R.L. as a Tenant.

At the beginning of the hearing, the Landlord, M.S., claimed that she had not received the Tenant's hearing package. The Landlord said on June 20, 2012, her ex-spouse (in the presence of a witness) served the Tenant's spouse in person with her hearing package and the Tenant's spouse handed him the Tenant's hearing package to give to the Landlord, M.S. The Tenant's application named only the Landlord, M.S. as a party.

The Landlord said her ex-spouse advised the Tenant (who was also present) that he could not accept service of the documents on behalf of M.S. and advised her to send them to the Landlord, M.S., but she refused to take them back so he left them in the Tenant's mail box. The Landlord, M.S., later sent the Tenant a text message asking her to deliver the documents to the Landlords' address for service.

The Tenant initially agreed that the Landlord's ex-spouse delivered the Landlords' hearing package to her on June 20, 2012 and on that day she served the Landlord's ex-spouse with her Application filed June 14, 2012. The Tenant said she only discovered that these documents had been placed in her mail box on June 23, 2012 and she sent them to the Landlord, M.S., by regular mail together with her amended Application filed on June 22, 2012. The Tenant then changed her evidence and claimed that she sent her Application to the Landlord by regular mail some time prior to June 20, 2012. The Tenant also changed her evidence to state that the Landlord's ex-spouse served the Landlords' hearing package on her on June 22, 2012 so that it was instead on June 22, 2012 that she tried to serve the Landlord's ex-spouse with both her Application *and her amended application*. The Tenant amended her application on June 22, 2012 to cancel a 10 Day Notice dated June 20, 2012.

Where the evidence of the Parties differs on this issue, I prefer the evidence of the Landlords as I found the Tenant's evidence on this issue to be unreliable in a number of respects. In particular, the Landlords provided corroborating witness statements of the Landlord, R.S., and a witness, M.L., dated June 26, 2012 who claimed that they attended the rental property on June 20, 2012 to deliver the hearing package and a 10 Day Notice of the same date. The Tenant also initially agreed that the hearing package was delivered on June 20, 2012. However, upon learning that her amended Application was not properly served by regular mail, the Tenant changed her evidence and claimed instead that it was served on the Landlord's ex-spouse in person on June 22, 2012. The Tenant also denied that she received a 10 Day Notice dated June 20, 2012 until she was confronted with the fact that this was the reason she had amended her application and that in the Details portion of her amended application she had written, "received new 10 Day Notice dated June 20, 2012."

Consequently, I find on a balance of probabilities that the Landlords served their hearing package on the Tenant and the Tenant attempted to serve the Landlord's spouse with her application (but not the amended application) on June 20, 2012. I further find that the Tenant served the Landlord with a copy of the amended application by regular mail on or about June 22, 2012. However, even if I accept the Tenant's argument that she was entitled to serve the Tenant's ex-spouse with her application and did so on June 22, 2012, I find that the Tenant has not complied with the time limits under the Act for serving her application. Section 59 of the Act says that an application for dispute resolution must be served on the other party ***within 3 days of filing it***. I find that the Tenant filed her initial application on June 14, 2012 but did not attempt to serve it on the Landlord until June 20, 20112 or 6 days later. I also find that the Tenant has not served the Landlord with her amended application (to cancel a 10 Day Notice to End Tenancy dated June 20, 2012) as required by s. 89 of the Act.

For all of these reasons, the Tenant's application to cancel the One Month Notice dated June 5, 2012, to cancel the 10 Day Notice dated June 20, 2012 and to recover the cost of emergency repairs are dismissed on the terms set out in the Conclusions section below.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This fixed term tenancy started on March 1, 2012 and expires on March 1, 2013. Rent is $1,325.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of $662.50 at the beginning of the tenancy.

The Landlord said on June 20, 2012 her ex-spouse served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 20, 2012 by leaving it with the Tenant's spouse who also resides in the rental property. The Notice alleges that there are rent arrears of $842.00. The Landlord claimed the actual amount of rent arrears is $617.00 comprised of $392.00 for April 2012 and $225.00 for June 2012.

The Parties agree that the Tenant gave the Landlord cash of $500.00 and a cheque for $392.00 in partial payment of April rent. The Parties also agree that the Tenant deducted $443.00 from her April rent to compensate her for a payment she made to her father for repairs to the rental unit. The Landlord said she had an agreement with the Tenant's father to make repairs but did not agree that the Tenant could deduct the amount from her rent. In any event, the Landlord said the Tenant's cheque for $392.00 was returned for insufficient funds and the Tenant did not repay that amount.

The Landlord also claimed that the Tenant paid only $1,000.00 for rent for June 2012 and as a result, in previous proceedings heard on June 20, 2012, she was granted a monetary order for the balance of $325.00. The Landlord said she offered the Tenant a rent reduction of $100.00 to compensate her for water damage to the flooring in the rental unit but the Tenant wanted $300.00 and therefore there was no agreement to reduce the amount of the arrears and they have not been paid. The Landlord also claimed that rent for July 2012 has not been paid.

The Tenant said the Landlord advised her about the bounced cheque for $392.00 but then told her that she only wanted $350.00 and that she should pay that amount to her father instead for repairs. The Tenant said she did so but then the Landlord got angry about the cost of repairs, demanded the money to be repaid and issued her a 10 day Notice. The Tenant said she paid the $350.00 on May 24, 2012 and thereby cancelled

the Notice. The Tenant admitted that she paid $1,000.00 for June 2012 rent but claimed that the Landlord agreed she could deduct $300.00 (or $150.00 for each of May and June) to compensate her for the damaged flooring in the rental unit.

The Parties agree that on or about May 4, 2012, there was a water leak in the rental unit that damaged the flooring in the kitchen and surrounding areas. The Tenant claimed that her father made emergency repairs in that he removed damaged sections of flooring and put down cardboard. The Tenant said she paid her father a total of $793.00 ($443.00 of which she deducted from her April rent and $350.00 which the Landlord made her pay back in May 2012). The Landlord claimed that no repairs have been made since May 4, 2012 because the estimates she got from the Tenant's father kept escalating. In any event, the Landlord said her agreement was with the Tenant's father and she never agreed that the Tenant could pay her father and deduct amounts from her rent.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 20, 2012 when it was given to the Tenant's spouse (who also resides in the rental property). Although the Tenant applied to cancel this Notice on June 22, 2012, that application was dismissed given that the Tenant had not served the Landlords with her amended application as required by s. 89 of the Act (as set out above). As a result, I find that the Landlords are entitled pursuant to s. 55(2)(b) of the Act to an Order of Possession to take effect 2 days after service of it on the Tenant.

In this matter, the Landlord sought to recover the amount of a returned cheque for $392.00 which she claimed was unpaid rent for April 2012. In previous proceedings between these parties heard on June 20, 2012, the Landlord also applied to recover the amount of this returned cheque. In her reasons for the decision, however the DRO found that the Landlord had not provided sufficient evidence to conclude that this amount related to the tenancy and she dismissed the Landlord's claim for it without leave to reapply. Consequently, I find that the Landlord is now barred by the legal principle, *res judicata*, from reapplying for the same relief in this matter.

The Landlord also sought to recover unpaid rent of $325.00 for June 2012. The Tenant claimed that the Landlord agreed to a rent reduction of $150.00 for May and June 2012 which the Landlord denied. Given the contradictory evidence of the Parties on this

issue and in the absence of any corroborating evidence from the Tenant regarding the existence of an agreement to reduce her rent for June 2012, I find that there is insufficient evidence to conclude there was such an agreement.

The Tenant also argued that she incurred expenses for emergency repairs. In particular, the Tenant said when she moved in there was a leak in the ceiling above the refrigerator that she paid $143.00 to her father to repair. The Tenant admitted that she deducted this amount from her rent for April 2012. The Tenant also claimed that following the water leak on May 4, 2012, she paid her father a further $650.00. The Tenant admitted that she also deducted $300.00 of this amount from her rent for April 2012. In essence, the Tenant claims that she has paid a further $350.00 to her father for removing damaged flooring in the rental unit.

The Landlord argued that she had an agreement with the Tenant's father to pay him a total of $300.00 for repairs but that no work has been done since May 4, 2012 because she did not agree to pay his escalating estimates. The Landlord also argued that she never agreed that the Tenant could unilaterally deduct amounts from her rent to pay her father and that it is a contractual matter between herself and the Tenant's father.

I find that there is insufficient evidence that the payments made by the Tenant to her father were for emergency repairs. While the Parties agree that there was a water leak in the rental property on May 4, 2012 that damaged some flooring, I cannot conclude that the amounts paid by the Tenant to her father were necessary or authorized by the Landlord. In other words, section 33(5) of the Act authorizes a Tenant to deduct the cost of emergency repairs from rent ***only*** when a Landlord fails to take steps to make the repairs. In this case, I find that the Landlord took steps to make repairs and entered into an agreement with the Tenant's father to do so. At no time was the Tenant required to pay any amount to her father because it was the Landlord who had entered into the agreement. I find that the Landlord did not authorize the Tenant to deduct $325.00 from her rent for June 2012 and that the Tenant was not entitled under s. 33(5) of the Act to do so as an emergency repair. As the Landlord was already granted a Monetary Order for this amount in the Parties' previous hearing, it is unnecessary for me to do so in this matter.

The Landlords claim that rent has not been paid for July 2012. The Tenant claimed that she sent an e-mail funds transfer for July rent but provided no evidence of it. In the absence of any evidence from the Tenant that rent for July 2012 has been paid, I find that the Landlords are entitled to recover $1,325.00 for July 2012 rent. I also find pursuant to s. 72 of the Act that the Landlords are entitled to recover from the Tenant the $50.00 filing fee they paid for this proceeding.

I Order the Landlords pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of $662.50 in partial payment of the monetary award. The Landlords will receive a Monetary Order for the balance owing of $712.50.

Conclusion

An Order of Possession to take effect 2 days after service of it on the Tenant and a Monetary Order in the amount of $712.50 has been issued to the Landlords. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Landlords' applications for compensation for damages to the rental unit and for compensation for damage or loss under the Act or tenancy agreement are dismissed with leave to reapply (provided they have not already been dealt with in the proceedings heard on June 20, 2012). The Tenant's applications to cancel a 10 Day Notice dated June 20, 2012, to cancel a One Month Notice dated June 5, 2012, to recover the cost of emergency repairs, for an Order that the Landlords make emergency repairs or general repairs, for an Order restricting the Landlords from entering the rental unit and authorizing the Tenant to change the locks, for a rent reduction and for the return of a security deposit are dismissed without leave to reapply. The Tenant's application for compensation for damage or loss under the Act or tenancy agreement is dismissed with leave to reapply (provided it has not already been dealt with in the proceedings heard on June 20, 2012).

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: July 09, 2012.

Residential Tenancy Branch