



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, FF

Tenant: ERP, LRE, MNDC, MNR, OLC, RP

Introduction

This hearing dealt with cross Applications for Dispute Resolution with the landlord seeking an order of possession and a monetary order and the tenant seeking orders to have the landlord make repairs; emergency repairs; restrict the landlords' access and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant. The hearing was originally convened on February 15, 2013 and due to confusion over service addresses for the landlord the hearing was adjourned to allow both parties to serve each other their Applications and evidence again.

I did however, at the first hearing, order the landlord to have a heating, ventilation, and air condition technician investigate problems with the rental unit's heating system immediately and to repair any problems that were discovered. The parties agree that while the landlord had arranged for a technician to investigate the problem immediately the repairs have not yet been completed.

I also ordered the tenant to pay rent when it was due on March 8, 2013 as the reconvened hearing would not be held until after that date. The tenant testified that she did not pay rent at that time.

As a result of an illness and death in her family the tenant failed to serve the landlord with her Application and evidence for the reconvened hearing. As such, I did not consider the tenant's evidence with the following exceptions and with agreement from the landlord: receipts for locksmiths; cleaning; garbage removal; and the landlord's advertisement from Craigslist.

Due to the complicated nature of the tenancy; the parties' respective Applications for Dispute Resolution; and the circumstances surrounding both I had both parties provide testimony regarding the entire tenancy.

As the tenant has failed to serve the landlord with her Application and evidence in regard to her own claim and because this hearing has already been adjourned once as

a result of service issues, I dismiss the tenant's Application in its entirety with leave to reapply for any compensation the tenant feels she may be entitled to as a result of this tenancy.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on November 4, 2012 for a 1 year and 1 day fixed term tenancy beginning on November 8, 2012 for a monthly rent of \$2,400.00 due on the 8th of each month with a security deposit of \$1,200.00 paid.

The landlord provided a copy a 10 Day Notice to End Tenancy issued by the landlord on January 16, 2013 with an effective date of January 27, 2013 citing the tenant had failed to pay rent in the amount of \$2,400.00 due on January 8, 2013.

The landlord provided documentary evidence that the notice was served by posting it on the rental unit door on January 16, 2013. The tenant testified she received the notice after she had filed her original Application for Dispute Resolution (January 18, 2013) perhaps on January 20, 2013 from her son who told her he found it outside.

The parties agreed the tenant has not paid rent for January, February or March 2013 and utilities in the amount of \$250.00.

The landlord did agree to deduct from the amount owed a total of \$740.56 for changing locks (\$126.56); cleaning the rental unit at the start of the tenancy (\$327.00); garbage removal (\$100.00); and carpet cleaning (\$187.00), based, in part, on my confirmation that the tenant had provided receipts for all of these expenses. The tenant had not provided a receipt for carpet cleaning but the landlord agreed to this deduction, regardless.

The parties could not agree on a deduction in the amount of \$32.00 for supplies to install a dryer in the basement rental unit and as this was part of the tenant's Application which I have dismissed with leave to reapply I note the tenant remains at liberty to include this amount if she pursues additional compensation.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

A tenant has a right under the *Act* to deduct from rent any amount of an overpayment of security deposit; as ordered by a Residential Tenancy Branch Arbitrator; or by completing and paying for emergency repairs as defined under Section 33 of the *Act* if the tenant has followed all the procedures under Section 33 and sought reimbursement.

While the tenant had spent money on cleaning the rental unit I find that cleaning is not an emergency repair as defined under Section 33. However, the changing of locks is considered an emergency repair. I accept the tenant attempted to have the landlord make the repairs and the landlord failed to do so. I also accept the tenant had attempted to seek compensation for the lock replacement.

However, as the amount of the lock replacement was \$126.56 this is the only amount of rent the tenant could have deducted from the payment of rent to be compliant with Section 26. As such, I find the tenant's failure to pay rent in accordance with Section 26 allowed the landlord to issue the 10 Day Notice on January 8, 2013.

I also find that even though the tenant had applied for dispute resolution prior to receipt of the 10 Day Notice and she subsequently amended her Application received by the Residential Tenancy Branch on February 15, 2013 to include seeking to cancel the 10 Day Notice, she failed to submit her Application within 5 days of receiving the 10 Day Notice.

As such, I find based on the agreement of the parties that the tenant owes the landlord the rent claimed and combined with the tenant's failure to have authority to deduct any amount more than \$126.56 from the rent the 10 Day Notice to End Tenancy is valid and enforceable.

Conclusion

I find the landlord is entitled to an order of possession effective, by agreement of both parties, on **March 21, 2013 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$6559.44** comprised of \$7,200.00 rent owed and the \$100.00 fee paid by the landlord for this application less the \$740.56 agreed upon deductions.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: March 14, 2013

Residential Tenancy Branch