



Dispute Resolution Services

Residential Tenancy Branch

Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR MNR OLC CNR MNDC, MNSD 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 amended claim on application is to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant also claims the total amount of \$8360 for money owed or compensation for loss under the Residential Tenancy Act (the Act), regulation or tenancy agreement. The tenant itemizes the claim as follows:

- a). \$160 for loss of food due to a non operating refrigeration unit
- b). \$3200 for loss of potential business income
- c). \$5000 for loss of quiet enjoyment and for 'emotional stress' alleged to have been caused by landlord's illegal entry of suite.

The tenant also seeks an Order for the landlord to comply with the Act in respect to entry of the suite.

The landlord's claim is for an Order of Possession effective as soon as possible due to unpaid rent, a Monetary Order to recover rental arrears, money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and inclusive of recovery of the filing fee associated with this application, and an Order to retain the security deposit in partial satisfaction of the monetary claim.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Should the landlord be ordered to comply with the Act?

Background and Evidence

This tenancy of a fully appointed rental unit began on May 01, 2009. Rent in the amount of \$1550 is payable in advance 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 \$775, and a pet damage deposit in the amount of \$775. The tenant failed to pay rent in the month of August 2009 and on August 02, 2009 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the month of September 2009.

The landlord requests an Order of Possession effective two (2) days from the day of service upon the tenant. The tenant testified he desires to vacate the rental unit as soon as possible.

The landlord's *compensable* and relevant Monetary claim on application as amended is:

- Unpaid rent for August 2009	\$ 1550.00
- NSF charge for August 2009	\$ 40.00
- Unpaid utility charges to August 31, 2009	\$ 164.91
- Unpaid rent for September 2009	\$ 1550.00
- Pre-estimate of utilities for September 2009	\$ 60.00

Landlord's compensable amended claim on application **\$ 3364.91**

The landlord provided evidence for the payment of rent, the Tenancy Agreement, and substantiating evidence for the unpaid utilities and NSF charge.

The tenant claims that during the tenancy the refrigerator and freezer stopped working. He immediately notified the landlord. The tenant testified that it took the landlord 3-4 days to determine to fix the unit, and e-mailed the tenant to have the unit

fixed, and by this time there was food spoilage estimated to be \$160. The tenant provided a list of food items for which he is claiming.

The tenant further claims that as result of the landlord's negligence in rendering his phone answering service inoperable for "about 4 days" he lost a business contract valued at \$3200, when the alleged lost business purported they could not access the tenant via the answering service and therefore went to a different company. Tenant claims \$3200. The tenant has not provided substantiating or corroborative evidence to support this claim.

The tenant also claims that as a result of an incident in which the landlord entering his rental unit without proper legal notice to the tenant, he lost quiet enjoyment of the suite and has incurred mental distress due to this incident, allegedly requiring medical attention. The tenant and landlord agree that an incident 'resembling' the tenant's account did occur. The landlord claims that she notified the tenant by e-mail several days before August 11, 2009, stating she was coming to the rental unit and would use her emergency key if he did not answer the door. The landlord provided her e-mail which states:

According to our lease agreement, which you broke by not paying your August 1, 2009 rent in the amount of \$1550.00 or the utility bills which you are responsible for, I am giving you more than the 24 hour notice required to inform you that I will be entering the unit on Tuesday, August 11, 2009 at or around 5:00 P

It is my hope you will be there, but if you are unable to be there at that time, I will use my emergency key to enter the unit.

Signed, landlord

The landlord testified, that in her mind, her purpose for entering the suite was to, "check on her stuff", and that she did not notify the tenant of the purpose of the inspection.

The landlord and tenant do not dispute that the landlord did enter the suite on August 11, 2009 using her key to access the unit along with the concierge of the building. The tenant claims he was asleep and awakened by the landlord "snooping" through all the rooms, along with the concierge. Tenant claims he confronted the landlord and concierge and told her she could not enter without proper notice. The tenant testified

that the landlord “came at me using her whole body to shove me out of the way”, and continued to enter and look through the unit, along with the concierge – all the while telling the landlord and concierge to leave. The tenant claims he called the Police and that is when the landlord and concierge left the unit. He advised Police he would not press assault charges, “this time”. The tenant testified that the incident left him uncomfortable in the apartment – he has had to see a doctor for his nerves, and has been prescribed sleeping pills and medication for his nerves. In his submission, the tenant states:

“Every sound I hear in the hallway makes me jump out of my skin thinking; is it her again coming in. I am even afraid to leave my unit to find work or clients in fear of her coming in and destroying my property. I feel a prisoner in my own mind and emotions now. I cannot get the picture of her shoving me out of the way like a mad person and her and the concierge snooping through all my rooms.

The landlord disputes the tenant’s testimony by stating she entered the unit with the concierge – looked around the unit to make sure all her belongings (appointed rental unit) were intact, and left. She disputes that the incident was as eventful as described 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*, a party claiming the damage or loss bears the burden of proof. Moreover, the applicant for damage or loss 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.

Based on the testimony of the parties **I find** that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent or provided any valid evidence to offset the non payment of rent. Therefore, the tenant's portion of their application to cancel the Notice to Vacate for Unpaid Rent or utilities is dismissed, and **I find** that the landlord is entitled to an Order of Possession.

As for the landlord's request for a monetary order, I find that the landlord has established a claim for **\$\$\$3100** in unpaid rent, **\$164.91** in outstanding utilities charges, and **\$40** for NSF charge. I decline to grant the landlord an award for pre-determined costs. The landlord is entitled to recovery of the **\$50** filing fee, for a total entitlement of **\$3354.91**

On preponderance of the evidence and on the balance of probabilities, **I find** the tenant's claim for loss of food due to a malfunctioning refrigerator is reasonable. **I grant** the tenant **\$160** for lost food items.

I find the tenant's application and claim for damage and loss totaling \$3200 does 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 landlord is given an Order of Possession, and the tenant is vacating the premises **I decline** to make an Order for the landlord to Comply with the Act and **I dismiss** this portion of the tenant's application without leave to reapply.

However, I am concerned by the events and conduct concerning the incident of August 11, 2009, in which, **I find** the landlord clearly illegally entered the tenant's suite without the benefit of proper notice: without stated reasonable purpose, or with the permission of the tenant. Section 29 of the Act states:

Landlord's right to enter rental unit restricted

- 29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

In respect to the landlord's illegal entry on August 11, 2009, and the ancillary claim of the tenant for \$5000 in compensation, as a result of this incident, **I grant** the tenant *nominal damages*. Such damages may be awarded where no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. In this respect, I award the tenant **\$500**.

Therefore:

Landlord's total entitlements, inclusive of filing fee	\$3354.91
Total of tenant's entitlements	-\$660.00
Owed to landlord by tenant	\$2694.91
Applied security deposit	-\$775.00
Applied pet damage deposit	-\$775.00
Monetary Order for Landlord	\$1144.91

Conclusion

I order that the landlord retain the deposit and interest of \$1550 in partial satisfaction of the claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$1144.91**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

I grant an Order of Possession to the landlord, effective **two (2) days** from the day the Order is served upon the tenant. 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 18, 2009.