



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, CNR, OLC, RP, RR, 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 rent; a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; to keep the security deposit; and to recover the filing fee associated with his application.

By the tenant: as an application for cancellation of a Notice to End Tenancy for unpaid rent; to order the landlord to comply with the Act, regulation, or tenancy agreement; to make repairs to the rental unit; to allow a tenant to reduce rent for repairs, services, or facilities agreed upon but not provided; and to recover the filing fee associated with this application.

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?

Should orders to the landlord be issued as claimed by the tenant?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. It was not disputed that the tenancy started on August 1st, 2011; that the rent is \$2500.00 per month and the tenant overpaid a security deposit of \$2800.00. The Act states that the security deposit cannot be greater than $\frac{1}{2}$ of one month's rent. Therefore the security deposit ought to have been no more than \$1250.00.

The landlord's agent testified that the tenant did not pay rent for March and April 2012, which adds to \$5000.00. In view of the overpayment of the security deposit of \$300.00, the landlord's agent re-adjusted the money owed by deducting that amount from the unpaid rent for a claim totalling \$4700.00.

In her documentary evidence, the landlord's agent provided a copy of the 10 Day Notice to End Tenancy served to the tenant in person on March 14, 2012.

The tenant did not dispute the agent's evidence. He stated that he withheld the rent because he has not had full use of the unit. He stated that he has been waiting 8 months to have access to his storage locker which was part of the tenancy agreement. He stated that he had to use his den for storage, and as such is not able to use the den

as part of the liveable quarters. The tenant also mentioned other problems with the unit, such as blinds not working properly.

The landlord's agent stated that she had not been made aware of the problems reported by the tenant.

Analysis

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. The tenant did not obtain orders from the director concerning paying the rent and as such he was not entitled to withhold rent. A remedy for the tenant would have been to seek assistance through dispute resolution if the landlord failed to attend to the issues.

Further, Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes 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. The tenant in this matter has not filed an application for dispute resolution within the timeframe allowed by statute. The landlord's Notice to End Tenancy is valid and on that basis the landlord is entitled to an order of possession.

There was no dispute concerning the amount of rent owed and therefore the landlord is entitled to a monetary order as claimed.

If the landlord appoints an agent, the landlord is bound by the representations of his agent, and is responsible for communicating to the agent concerns or issues addressed by the tenant. I accept the tenant's undisputed testimony concerning the loss of rental space for eight months. I find that the tenant is entitled to rent reduction of \$100.00 per month for the lack of use of the storage unit, and for the related inconvenience of using the den for storage.

Conclusion

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's agent established a claim of \$4700.00. Under his application, the tenant established a claim of \$800.00. I decline to make an order regarding the filing fees and each party will assume responsibility for the costs associated with their application.

Since the landlord kept \$2500.00 as security deposit, pursuant to Section 72 of the Act, I set off the amount awarded to the tenant (\$800.00) combined with the security deposit (\$2500.00) against the amount awarded to the landlord (\$4700.00) and I grant the landlord a monetary order for the balance of \$1400.00.

Since the tenancy has ended, it is not necessary that I further issue orders to the landlord concerning repairs to the unit.

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 11, 2012.

Residential Tenancy Branch