Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Belmont Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, OPR, MNDC, RR, MNSD, FF

Introduction

This was a cross-application hearing.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The tenant supplied digital evidence which the landlord received and was able to view within the time frame set out in section 10 of the Residential Tenancy Branch Rules of Procedure. The digital evidence included multiple documents which I found could be readily reproduced on paper. The tenant stated that documents were actually photographed and, as such, should be considered as part of the digital evidence submission, as photographs.

I explained that digital evidence may not include anything other than photographs, audio and/or video recordings or other material that cannot be reproduced on paper. Therefore, I declined to consider any digital evidence that did not meet the requirement of the Rules of Procedure. Documents that were included as digital evidence, which did not fall within those allowed; were not considered as photographs. During the hearing the tenant did not play any recordings or point to any photographs contained in his digital evidence. The tenant was told he could make any oral submissions that he felt were required.

The landlord supplied twenty pages of evidence which the tenant said he had not received. There was no dispute that the evidence had been sent via registered mail, but when the tenant obtained the tracking number from the landlord and tried to retrieve the registered mail he was told by Canada Post that the mail had been sent to an

address that was not his. As the tenant had not received the evidence package I determined that the landlord's evidence would be set aside and that the landlord could provide oral submissions. The landlord did not object.

At the start of the hearing the tenant confirmed receipt of 2 Notices ending tenancy. On September 26, 2013 the tenant received a 1 month Notice to end tenancy for cause. On October 2, 2013 the tenant received a 10 day Notice to end tenancy for unpaid rent. The tenant applied for dispute resolution on October 3, 2013 and requested cancellation of the 1 month Notice ending tenancy only.

I accepted the tenant's submission that it would be reasonable to also consider inclusion of a request to cancel the 10 day Notice to end tenancy for unpaid rent. In the interests of natural justice and administrative fairness, and the tenant's obvious intention to continue the tenancy I amended the application to include the tenant's request to cancel both Notices ending tenancy. The landlord did not object.

The tenant's advocate wished to provide testimony. The tenant was told that the advocate could make submissions but that those submissions would be given appropriate weight, as the advocate would be present throughout the hearing. There were no issues with the advocates' testimony and I have given it full consideration.

In the absence of a copy of the 10 day Notice to end tenancy, at the start of the hearing the parties both agreed on the details of the 10 day Notice to end tenancy for unpaid rent which was issued to the tenant on October 2, 2013. The landlord provided a copy of the Notice, as requested.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession based on a 10 day Notice to end tenancy for unpaid rent?

Is the landlord entitled to compensation in the sum of $1,514.00 for unpaid October and November 2013 rent?

May the landlord retain the security deposit in partial satisfaction of the claim?

Is the tenant entitled to compensation in the sum of $22,499.00 as compensation for damage or loss under the Act?

Must rent owed be reduced as a result of repairs that have been agreed upon but not provided?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenant said the tenancy commenced on December 16, 2011; the landlord said it started on January 1, 2012. A tenancy agreement was signed indicating rent in the sum of $757.00 was due on the 1st day of each month; a copy of the agreement was not supplied as evidence. A security deposit in the sum of $365.00 was paid.

The tenant stated that he owed $772.00 rent; which included parking. The landlord said that the tenancy agreement indicated rent was $757.00 per month and that a separate term included parking in the sum of $15.00 per month. The landlord stated total rent owed was indicated at $757.00. Both parties confirmed that there was no separate tenancy clause outlining parking requirements; only the term that payment must be paid each month.

The tenant's application included a number of allegations:

- No repairs made
- Unsafe living conditions;
- Denial of entry to the tenant's guests;
- Harassment by the Victoria Police Department on behalf of the landlord;
- False statements by the landlord;
- Harassment by the landlord and
- Intimidation of a witness.

The landlord and the tenant agreed that on October 2, 2013 a 10 day Notice to end tenancy for unpaid rent, which had an effective date of October 17, 2013, was served by personal delivery to the tenant on October 2, 2013.

The Notice indicated that the Notice would be automatically cancelled if the landlord received $772.00 within 5 days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within 5 days.

The tenant agreed that he did not pay October rent and that he has not paid November 2013 rent due. The tenant stated that the landlord has not made repairs and that as a result they have breached the tenancy contract. The tenant stated that contract law supersedes the Residential Tenancy Act and that he was entitled to withhold rent due.

The tenant explained that he had issued the landord a written warning that if they took any legal action against him he would submit billing to the landord for his time at the rate of $600.00 per hour. The tenant has submitted a claim in the sum of $22,499.00 for thirty-seven and one-half hours' of his time spent since the tenancy commenced.

The tenant said the landlord has a history of harassment; that they have had the police attend at his unit and harass him and that resulting “legal hearings” have caused him to expect payment from the landlord. The tenant said the landlord has received an invoice requesting payment. The tenant believes this is a fair wage.

The tenant made general submissions in relation to repairs that have not been completed by the landlord. The tenant said he had not made any application earlier in the tenancy, requesting repair, as he was not aware that he could do so. The tenant instead submitted a bill for his time and services as a result of false accusation made that he is harassing the landlord.

The tenant stated that the claim for compensation includes his time spent in retrieving his vehicle which the landlord had towed from the parking lot on October 18, 2013. On October 17, 2013 the landlord had given the tenant written notice that he must remove the car, as he had not paid for parking. When the tenant did not pay, the car was towed and the tenant spent $344.40 to retrieve his car from the towing company. The tenant said that he legally rented the space, that rent included parking and that the landlord illegally removed his vehicle from the property without the benefit of an Order of possession.

The tenant’s witness said that a previous manager had threatened to have the tenant’s car towed and had threatened the tenant.

The landlord said that the tenant owes October and November rent in the sum of $757.00 each and they requested compensation in the sum of $1,514.00.

The landlord said that they have received 2 requests for repair from the tenant; that the front door not close so loudly and that the intercom sound level be reduced. The tenant lives near the front entry and the intercom is set to the lowest sound level possible. The landlord does not believe the front door slams too loudly but did not dispute that tenant might hear the door.

The landlord said that the parking is not included with rent, but a separate agreement not included as rent. When the tenant did not pay for the parking in October, after checking with a number of authorities, the landlord established that parking was not considered as rent and that the landlord had a legal right to remove the vehicle from their property. The landlord stated that the tenant had rented a parking space on the landlord’s property, separate from the rental unit.

Analysis

Section 46(1) of the Act stipulates that a 10 day Notice to end tenancy for unpaid rent is effective 10 days after the date that the tenant receives the Notice. As the tenant confirmed he received the Notice on October 2, 2013, I find that the Notice was effective on the date indicated on the Notice; October 13, 2013.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to end tenancy that required the tenant to vacate the rental unit on October 13, 2013, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice to end tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I find that the tenant did not pay rent. The tenant did dispute the Notice but came to the hearing to confirm that he had not paid rent.

Section 26 of the Act provides:

> ***26*** *(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Despite the tenant's submissions that the landlord has failed to make repairs and that the Act was of no force, the tenant has confirmed that he had not made any expenditure of emergency repairs equivalent to the rent owed, nor did he have an Order allowing him to reduce the rent to zero.

Therefore, I find, in the absence of payment of rent within 5 days of October 2, 2013, pursuant to section 46(5) of the Act, that the tenant accepted that the tenancy has ended effective October 16, 2013. On this basis I will grant the landlord an Order of possession that is effective two days after the order is served to the tenant.

As the tenancy has ended based on the 10 day Notice ending tenancy, reference to the 1 month Notice ending tenancy for cause was not required

In relation to the tenant's claim for compensation, when making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 62(4) of the Act provides:

> *(4) The director may dismiss all or part of an application for dispute resolution if*
>
> *(a) there are no reasonable grounds for the application or part,*
>
> *(b) the application or part does not disclose a dispute that may be determined under this Part, or*

> *(c) **the application or part is frivolous** or an abuse of the dispute resolution process.*

The tenant has made what I find to be a frivolous claim for compensation against the landlord. The tenant provided no verification supporting his submission that he has somehow incurred costs in the amount claimed. The tenant has failed to demonstrate that the landlord has breached the Act and, in the absence of evidence that the tenant has suffered a loss I find that a claim in the sum of $600.00 is dismissed without leave to reapply.

The tenant has made accusations of a failure to repair which should support a rent reduction, but there was no evidence that the tenant took steps to mitigate any claim by submitting an application for dispute resolution early in the tenancy. Outside of the complaints made in relation to the front door and the entry intercom, during the hearing the tenant did not reference any specific repairs that had been agreed upon and not provided. Therefore, in the absence of an attempt to mitigate, I find that the claim for rent reduction is dismissed.

I find, in the absence of a term of the tenancy that indicated parking paid formed part of rent owed, that parking is a separate agreement, and that disputes related to parking are not within the jurisdiction of the Act.

Based on the landlord's submission and acknowledgment of the tenant, I find that the tenant has not paid rent in the amount of $1,514.00 for October and November 2013 and that the landlord is entitled to compensation in that amount.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant.** This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find, pursuant to section 72 of the Act that the landlord is entitled to retain the security deposit in the sum of $365.00, in partial satisfaction of the claim.

As the landlord's application has merit I find that the landlord is entitled to recover the $50.00 filing fee cost from the tenant.

Based on these determinations I grant the landlord a monetary Order for the balance of $1,199.00**.** In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is dismissed.

The landlord is entitled to an Order of possession for unpaid rent.

The landlord is entitled to a monetary Order for unpaid rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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: November 14, 2013

Residential Tenancy Branch