



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, MNDC, CNR, OPR, MNR, & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on November 2, 2014. I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was personally served on the landlord on November 7, 2014. I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was personally served on the Tenants on November 15, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated November 2, 2014?
- b. Whether the tenants are entitled to a repair order?
- c. Whether the tenants are entitled to a monetary order and if so how much?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?
- f. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on February 1, 2014 and continue on a month to month basis. The rent is \$950 per month payable on the first day of each month. The tenants paid a security deposit of \$475 at the start of the tenancy.

The landlord testified the tenants have failed to pay the rent for February 2014 (\$950 is owed), July 2014 (\$950 is owed) and November 2014 (\$850 is owed as the tenants made a \$100) and the sum of \$2750 remains owing. The tenant(s) remain in the rental unit. .

The landlord testified he faxed a document to me a couple of days ago. I have not received it. The Rules of Procedure provide that an applicant must provide his evidence as soon as possible or in any event at least 14 days before the hearing. I determined it was not appropriate to grant an adjournment and that it was not appropriate to consider this evidence.

The tenant testified he paid all of the rent and that he has found receipts. He testified was initially unable to locate them but has since found them after being asked to provide them by the Ministry of Social Development. He gave those receipts to the Ministry on November 20, 2014. However, he has not provided the receipts to the landlord or to the Residential Tenancy Branch. The Rules of Procedure provide that a respondent must provide evidence to the Branch and to the other side as soon as possible or in any event at least 7 days before the hearing. I determined it was appropriate to treat the parties in the same manner. I determined it was not appropriate to grant an adjournment and that it was not appropriate to wait for the receipts. The tenant had found those receipts and had them in his possession for at least 7 days. It is not appropriate to delay the hearing because a party fails to follow the Rules with regard to the service of evidence.

The tenant testified he has paid all of the outstanding rent. After carefully considering the disputed evidence I determined the tenant failed to prove this allegation for the following reasons:

- The parties acknowledged that the landlord signed a receipt prepared by the tenant when the tenant paid the rent. The tenant failed to provide those receipts in a timely manner and it is impossible to determine whether they cover the claims in question. The

tenant had sufficient time to provide copies to the landlord and to the Residential Tenancy Branch but failed to do so.

- The evidence presented by the tenant is inconsistent. The landlord served a 10 day Notice to End Tenancy on November 2, 2014 alleging \$2750 is owed. It is apparent from the Notice the landlord is claiming for 3 months unpaid rent. The tenant filed an Application for Dispute Resolution. The Application for Dispute Resolution seeks a repair order and monetary order disturbances caused by the basement tenant. While it applies to cancel the 10 day Notice it states "Did not Pay Rent for Oct. Just November..." The tenant in the Application for Dispute Resolution has acknowledged he owes rent. If he was disputing the Notice on the basis that he has paid the rent one would have expected that he could clearly state that all of the rent has been paid.

Tenants' Application to Cancel the Notice to End Tenancy:

As a result I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. I do not accept the testimony of the tenant that the rent was paid. The tenancy will end in accordance with the Notice to End Tenancy.

Tenants' Application for a Repair Order:

As the tenancy is coming to an end I determine the dispute with respect to a repair order was moot and as a result I dismissed the tenants' application for a repair order.

Tenants' Application for a monetary Order:

The tenants seek a monetary order in the sum of \$2035 for the reduced value of the tenancy. The tenant testified the landlord rented the downstairs suite to a couple of tenants who are up all night and disturbed through yelling, screaming, slamming of doors several times a day. The tenants claim compensation of \$20 each (including their daughter) for a total of \$60 multiplied by 26 days for a total of \$1560 plus \$475 being ½ of the rent for a total of \$2035 for loss of sleep, loss of security, pain and suffering, loss of concentration etc. Further, the tenant testified these downstairs tenants hacked into the power meter downstairs and put them at significant risk of fire.

The landlord testified that he served a one month Notice to End Tenancy on the downstairs tenants around the middle of October after receiving complaints from these tenants. The

downstairs tenants vacated the rental unit on November 11, 2014. The tenants testified the downstairs tenants vacated the rental unit one week ago.

Policy Guideline #6 provides as follows:

“Basis for a finding of breach of quiet enjoyment

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. **Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.**” (my emphasis)

The disturbance complained of by the tenants was not caused by the landlord but by other tenants. The tenants failed to prove that the landlord stood “idly by while others engage in such conduct.” The landlord took immediate action when advised of the disturbance and served a one month Notice on the downstairs tenants. As a result I determined the tenants failed to prove their monetary claim against the landlord and accordingly this claim is dismissed.

Landlord's Claim - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenants' application to cancel the 10 day Notice to End Tenancy has been dismissed. Accordingly, I granted the landlord an Order for Possession on 2 days Notice..

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of February, July and November 2014 and the sum of \$2750 remains outstanding. **I granted the landlord a**

monetary order in the sum of \$2750 plus the sum of \$50 in respect of the filing fee for a total of \$2800.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and 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: November 27, 2014

Residential Tenancy Branch

