



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNR MNDC LRE RR OPR MNR FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied to cancel a notice to end tenancy, as well as for a monetary order for compensation under the Act, an order suspending or setting conditions on the landlord's right to enter the rental unit and an order allowing the tenant to reduce the rent. The landlord applied for an order of possession and a monetary order for unpaid rent. Both parties sought to recover the filing fee for the cost of their respective applications.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an order of possession?

Is the tenant entitled to a reduction in rent?

Is the landlord entitled to a monetary order for the amount claimed?

Is the tenant entitled to a monetary order for the amount claimed?

How should the deposit payments be characterized?

Should an order be made to suspend or set conditions on the landlord's right to enter the rental unit?

Is either party entitled to recovery of their filing fee?

Background and Evidence

The tenancy began on July 24, 2008, with monthly rent in the amount of \$3300 payable in advance on the 24th day of the month. At the outset of the tenancy, the tenant paid to

the landlord a security deposit in the amount of \$1650 and a further \$1650 which the landlord indicates was to represent half a month's rent for the last month of the tenancy. The tenant submits that his understanding was that the further \$1650 was also a type of damage or security deposit. Almost immediately after moving in, the tenant noted numerous deficiencies in the rental unit, which he brought to the landlord's attention. Of greatest concern to the tenant was his inability to regulate the temperature within the rental unit, and in response to this issue the landlord agreed to reduce the monthly rent, as of August 24, 2008, from \$3300 per month to \$3000 per month. The tenant wrote the landlord a cheque dated August 24, 2008 for \$3000 for the next month's rent, but then the tenant stopped payment on the cheque and sought agreement from the landlord for a further rent reduction to \$2500. On September 3, 2008 the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent. The tenant has not paid the landlord any amount toward outstanding rent. The tenant seeks a reduction in rent applicable to the entire tenancy, with monthly rent in the amount of \$2500. The landlord seeks an order of possession and a monetary order in the amount of \$3800 representing rent arrears from August 24, 2008 to October 1, 2008.

Analysis

In regard to the notice to end tenancy for non-payment of rent, the tenant was served with the notice and has not paid the outstanding rent. I therefore find that the notice is valid and the landlord is entitled to an order of possession.

In regard to the reduction in rent, I find that the landlord did acknowledge that the tenant was entitled to a reduction in rent due to the tenant's inability to control the temperature in the rental unit. I find that a \$300 reduction in rent is reasonable. I further find that the reduction ought to be applied to the duration of the tenancy, and the tenant is therefore entitled to recover \$300 from the rent paid for July 24, 2008 to August 23, 2008. As for outstanding rent, the tenant owes \$3000 for August 24, 2008 to September 23, 2008 and a further \$800 for September 24, 2008 to October 1, 2008.

In regard to the \$1650 which the tenant paid at the outset of the tenancy which the landlord has characterized as advance payment of half the final month's rent, I find that

the landlord was not permitted to require this type of advance payment and this amount therefore amounts to a further security deposit upon which the landlord must pay applicable interest. I therefore find that the tenant paid a total security deposit of \$3300 on July 24, 2008, and the interest on this amount is \$9.60.

Because the tenancy has ended as of the effective date of the notice to end tenancy, I need not consider the tenant's application to set conditions on the landlord's right to enter the rental unit and I dismiss that portion of the tenant's application.

I find that if the parties had behaved more reasonably they would have resolved this matter without resorting to dispute resolution, and therefore neither party is entitled to recovery of their filing fee.

Conclusion

I grant the landlord an order of possession effective two days after service. The tenant must be served with the 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.

As for the monetary order, I find that the landlord has established a claim for \$3800 in unpaid rent, less \$300 due to the tenants for the first month's rent, for a total claim of \$3500. I order that the landlord retain the deposit and interest of \$3309.60 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$190.40. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated October 2, 2008.