



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPB, MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's request for an Order of Possession for breach of a material term of the tenancy agreement, a Monetary Order for unpaid rent, utilities, loss of rent, retention of the security deposit, and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other party's submissions.

Issues(s) to be Decided

1. Whether the landlord has established an entitlement to an order of possession.
2. Whether the landlord has established an entitlement to unpaid rent and other damages or loss under the tenancy agreement, regulations or Act.
3. Retention of the security deposit.
4. Award of the filing fee.

Background and Evidence

Upon hearing testimony of both parties, I make the following findings. The tenant had been residing in the lower unit of the residential building since approximately December 1999. Under the former tenancy agreement, the tenant was required to pay \$535.00 per month including an estimate for hydro and utilities. In May 2009 the tenant temporarily moved to the upper unit in order to accommodate extensive renovations the landlord was undertaking in the rental unit. The parties agreed that the tenant would pay rent of \$535.00 for May 2009 and no rent for June 2009 in recognition of the construction. The renovations are not yet complete and the tenant remains in the upper unit. The tenant paid \$535.00 in rent for the month of July 2009.

I was provided evidence that on May 28, 2009 the parties signed a new tenancy agreement for the lower unit that was to commence July 1, 2009. The tenancy agreement was accompanied by two pages of terms and conditions that were signed by the parties. The tenancy agreement and the pages that accompany the agreement reflect that the tenant would pay rent of \$800.00 per month for the lower unit, after the renovations were complete, and included terms dealing with storage, parking, and use of the property, among other things. The notice that accompanied the tenancy

agreement stated that renovations were expected to be completed August 1, 2009 and that 28 days after the lease was signed all covenants would be strictly enforced.

On June 30, 2009 the landlord personally served a *One Month Notice to End Tenancy for Cause* (the Notice) upon the tenant with an effective date of July 31, 2009. The Notice indicates the tenant breached a material term of the tenancy agreement that was not corrected within 30 days of written notice to do so. The landlord referred to one of the pages that accompany the tenancy agreement signed May 28, 2009 as the written notice to the tenant to correct the breaches cited by the landlord. The tenant did not dispute the Notice within 10 Days of receiving the Notice but claimed he intended to do so today.

Discussion ensued during the hearing and a mutual resolution between the parties was facilitated. The parties mutually agreed that the tenant would be permitted to occupy the upper unit until August 15, 2009 at which time the tenant would have to vacate the property and remove all of his possessions. The parties agreed that the tenant would pay rent equivalent to one-half of \$535.00 for August 1 – 15, 2009.

With respect to the landlord's monetary claim, the landlord was seeking compensation for hydro and utilities of \$122.48 and \$93.00; loss of rent for the lower unit for August and September 2009 totalling \$1,600.00; loss of rent for the upper unit for September and October 2009 totalling \$2,300.00.

The landlord testified that the tenant acted violently towards him and he has not been able to work at the rental unit since July 2, 2009 causing delays in the progress of the renovation and the landlord was claiming for anticipated loss of future rent. The tenant acknowledged getting angry at the landlord after the landlord entered the property without proper notice and moving his vehicle without his permission but denied the landlord has been precluded from working on the property. Rather, the tenant was of the position he merely wants proper 24 hour notice before the landlord enters the residential unit.

Analysis

I accept the mutual agreement reached between the parties to end the tenancy on August 15, 2009 and I provide the landlord with an Order of Possession effective August 15, 2009. The tenant is ordered to vacate the property and remove his belongings on or before August 15, 2009. The Order of Possession must be served upon the tenant and may be filed in The Supreme Court of British Columbia to enforce as an Order of that court.

Where parties cannot reach a mutual agreement, the party making the claim has the onus or burden of proof to prove the claim. Proof includes evidence the other party violated the Act, regulations or tenancy agreement, caused the party to incur damages or loss, and the quantum of the loss. Without sufficient documentation, when one party provides an explanation of the facts in one way and the other party provides an equally probable explanation of the facts, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

With respect to the landlord's monetary claims, I find the landlord did not provide sufficient evidence that he is entitled to recover additional utilities from the tenant. The landlord did not provide copies of hydro or utility bills or evidence of the tenant's usage versus the landlord's usage during renovations and upon hearing that the rent of \$535.00 included an pre-determined estimate of utilities, I dismiss the landlord's claims for utilities as unsubstantiated. I also find that waiving rent for June 2009 of \$535.00 included the waiver of receiving compensation for utilities.

The landlord is not entitled to make claims for an anticipated loss as the loss has not been incurred and cannot yet be substantiated; therefore, I dismiss the landlord's claims for future months of loss of rent with leave to reapply.

I order the parties to share in the filing cost for this application. Therefore, the landlord is authorized to withhold \$25.00 from the tenant's security deposit in satisfaction of this award. The remainder of the security deposit remains in trust for the tenant to be administered in accordance with the requirements of the Act.

Conclusion

The tenancy ends by mutual agreement on August 15, 2009. The landlord is provided with an Order of Possession effective August 15, 2009.

The landlord's monetary claim for utilities is dismissed. The landlord's monetary claim for anticipated loss of rent is dismissed with leave to reapply. The parties will share in the filing fee and the landlord is authorized to deduct \$25.00 from the tenant's security deposit in satisfaction of this order.



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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: July 21, 2009.

Dispute Resolution Officer