



Dispute Resolution Services

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

DECISION AND SETTLEMENT

Dispute Codes:

OPR, MNR, MNSD, FF CNR, PSF, OLC

Introduction

This hearing was convened in response to an application by the landlord and an application by the tenant.

The landlord's application sought an Order of Possession due to unpaid rent, a Monetary Order to recover rental arrears and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

The tenant's application seeks to cancel a Notice to End Tenancy for Unpaid rent, provide services or facilities required by law and recover the filing fee. The tenants still reside in the rental unit.

After preliminary discussions, the relevant and amended matters before me are as follows:

The landlord's application only seeks an Order of Possession for unpaid rent, and to recover the filing fee. The landlord verbally amended their application in the hearing; withdrawing their claim for a Monetary Order for rental arrears. Therefore, the monetary portions of the landlord's application are hereby dismissed without leave to reapply.

The tenant's application seeks to cancel a Notice to End Tenancy for Unpaid rent and that the landlord cleans the ductwork for the heat and fresh air system. The tenant's application is amended to reflect that they seek the landlord to comply with the Act, rather than to provide services or facilities required by law

Issue(s) to be Decided

Is the notice to end tenancy valid? or,

Should the notice to end tenancy be cancelled?

Is the landlord entitled to an Order of Possession?

Should the landlord be made to provide services or facilities required by law?

Are the landlord and/or tenant entitled to the monetary amounts claimed?

Background and Evidence

This tenancy began February 15, 2008. There is no formal written tenancy agreement between the parties. The tenancy is by verbal agreement. Rent was purportedly agreed to be \$1500 per month. The tenant claims it was including utilities, and the landlord claims the amount is plus utilities, with the tenant paying 2/3 of the utilities for the rental property – shared with another tenancy downstairs. The landlord claims the agreement was that there were to be no pets, other than a “small dog”. The tenants claim that there was no stipulation about restricting pets, and now have a “medium dog”.

The rent is due in advance on the 1st of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$750. There was no start of tenancy inspection carried out between the parties. For the past year the tenant has been paying \$1350 to the landlord each month: with-holding \$150 for combined utilities in their name, as the landlord did not want them in her name. This arrangement makes sense to the tenants according to their interpretation of the tenancy agreement: however, has been alienating the landlord. To complicate matters, the tenant has been asking the landlord to clean out the heating ducts at the rental home as the home is experiencing an unusual amount of dust. The landlord has been insisting that this matter is the tenant’s responsibility. The conveyance of the rent each month is also an issue. The parties do not have an agreed system for the landlord to receive the rent each month. In most respects there is vast contrast in the tenant and landlord’ testimony and the relationship has progressively deteriorated over the term of the tenancy making resolution of issues, at best, frustrating for both parties.

The tenant clearly failed to pay rent, at least for the month of June 2009 and on June 14, 2009 the landlord purports to have served the tenant with a 10 Day Notice to end tenancy for non-payment of rent by placing the Notice to End under their door mat. The tenant subsequently was alerted to the Notice under the mat and on obtaining some advice from Residential Tenancy Branch paid the rent (in the amount that they determined reflected their verbal tenancy agreement) within five (5) days of receiving the Notice to End, and, in addition, the tenants also filed for dispute resolution to cancel the Notice to End, within the prescribed period to do so. The landlord also filed for dispute resolution for possession.

Analysis and Settlement

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice and the manner of service of the notice fail the test in order for this type of notice to be valid.

- the amount stipulated in the Notice to end is certainly the landlord's determination of what the tenant owed – but it is far more than what the tenants determined they owed. Again, due to their different understandings of the terms of the tenancy agreement. Regardless, the tenant paid the rent for June 2009, and as the landlord has amended her monetary claim to zero, I can only surmise that the amount paid by the tenant in satisfaction of the Notice to End was sufficient to satisfy the amount upon which the 10 Day Notice to end was based.
- The landlord served the tenant with the 10 day notice to end in a manner contrary to Section 88 of the Residential Tenancy Act. None the less, the tenant acted on the notice as soon as they were advised they could not with-hold rent and they did so within 5 days of receiving the Notice to End by paying rent of \$1350 and properly applying to formally dispute the Notice to End .

On the preponderance of all the evidence on this matter of the Notice to End for unpaid rent, I **find** that there is sufficient cause to cancel the Notice to End. Therefore, I **order** the 10 Day Notice to End Tenancy for unpaid rent dated June 14, 2009 is cancelled and of no effect, with the result that the tenancy, for now, will continue. The landlord's application for an Order of Possession is dismissed.

However, during the course of the hearing, and in good faith, the parties turned their minds to compromise and reached an agreement to settle their differences and specifically all matters the subject of their respective applications for dispute resolution, on the following conditions and to the satisfaction of both parties:

Settlement Agreement

1. The landlord and tenant agree that rent payable to the landlord is **\$1500** per month, not including utilities, and payable on the 1st of every month, as of August 1, 2009.
2. The tenant agrees they will convey the rent to the landlord each month by personally taking the rent to the landlord – as per the agreed amount and timing of the rent payment, above.
3. The tenant will pay the landlord a pet damage deposit equal to one half month's rent, or **\$750**, as soon as possible and no later than August 14, 2009.
4. The tenant will maintain all utilities in their name and ensure the utilities are fully paid as required; and, take responsibility to collect one third of the utilities from the lower suite on the rental property for every month the lower suite is tenanted. When the lower suite is not tenanted, the applicant tenant will deduct one third of utilities from their rent, **only** if the reduced rent to the landlord is accompanied by a copy of the utilities bills upon which the rent reduction calculation is based.
5. The landlord and the tenant will meet at an agreed-upon time and date to execute a formal written tenancy agreement, inside of **August 10 to 14, 2009**; if necessary, with the benefit of the landlord's representative, Ms. Lawrence.

The tenancy agreement will incorporate the terms and conditions of this settlement and will attend to all other matters required for a valid tenancy agreement in compliance with Section 13 of the Residential Tenancy Act.

The parties were advised that a blank tenancy agreement is available and can be downloaded from the RTB website at <http://www.rto.gov.bc.ca>.

6. The parties have already been advised that the landlord is responsible to have the heating and fresh air ducts cleaned. The parties agree that the landlord will hire and pay for the ducts to be cleaned, within a reasonable time agreeable to the parties, and that the parties will communicate on this matter to the best of their abilities and with the benefit of the landlord's representative, Ms. Lawrence.

Conclusion

The Notice to End is Cancelled. The tenancy continues.

The parties will abide by their Settlement Agreement.

The heating and fresh air ducts of the rental property will be cleaned by the landlord.

As the parties have settled their matters, I decline to award either party recovery of their respective filing fees.

Dated July 30, 2009.