



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR, ERP, FF MNDC, MNR, MNSD, O, OLC, PFSF, RP, RR

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, that the landlord make necessary emergency repairs, for money owed in compensation for damage or loss, the cost of emergency repairs, return of the deposit paid by the tenant, that the landlord comply with the Act, that the landlord provide services or facilities required by law and that the landlord make repair to the rental unit, site or property.

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 evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on November 2, 2009 be cancelled?

Is the tenant entitled to compensation in the sum of \$6,128.00?

Is the tenant entitled to filing fee costs?

Background and Evidence

The landlord and the tenant agree that a 10 Day Notice to End Tenancy for Unpaid Rent was issued on November 2, 2009 and that the tenant received the Notice on that date. The Notice indicated that the tenant had not paid \$4,640.40 in rent due on November 1, 2009. During the hearing the tenant acknowledged that he has not paid the landlord any rent since moving into the rental unit.

This tenancy commenced on September 1, 2009, rent was \$1,650.00 per month, due by the 3rd day of the month. The tenancy agreement submitted as evidence indicates that the tenant paid a deposit in the sum of \$800.00 by cheque dated September 9, 2009. During the hearing the tenant confirmed that on October 12, 2009 the landlord received a cheque in the sum of \$1,250.00 and that the tenant placed a stop payment on this cheque and no further payments were made to the landlord.

The landlord testified that she attempted to assist this tenant and that due to the problems they have encountered they tenancy must “finish” and that they need to part ways. The landlord stated she felt the situation was very grave and that she could no longer tolerate having the tenant remain in the unit.

The tenant testified that he did not feel he should pay further rent to the landlord as the landlord had failed to provide services and make required repairs. The tenant is claiming the following compensation from the landlord:

Sunroom carpet piece	148.00
Cleaning supplies	17.79
Labour	50.00
Shop equipment losses – tire theft	1,300.00
3 rd party truck repairs	1,500.00
Loss of use of shop \$500.00/month	1,000.00
Equipment moving costs	500.00
Estimated costs to remove refuse and for repairs:	
Bobcat/loader	600.00
Labour	400.00
Finish sunroom floor and install door	400.00
Furnace service	200.00
	1600.00

The tenant stated that the landlord did not clean the rental unit and that the sunroom was dirty. The tenant submitted 17 photographs of the house and property as evidence. The photographs of the sunroom show a plywood floor that is well-worn. The tenant testified that they incurred costs for painting, cleaning supplies and labour as the landlord would not clean this room.

The tenant stated that access to the shop was blocked by two buildings left on the property by the previous occupant and that due to this obstruction the tenant incurred costs for truck repair that he could have completed if access to the shop had been possible. The tenant has claimed for the cost of tires he states were stolen from a locker in the carport as the landlord has the only other set of keys to this locker. The tenant testified that he did not have insurance. The tenant is also claiming loss of use of the shop as he stated the door was welded shut from the time the tenancy started until October 11, 2009. The tenant is claiming equipment moving costs for the time and effort required to move items once access to the shop is cleared.

The tenant's evidence indicates that they have made efforts to communicate in writing with the landlord and submitted a copy of a letter dated October 6, 2009 in which they ask the landlord to remove garbage from the property, mention access to the shop, the presence of cattle in pasture that was for their use and the need for furnace servicing. The landlord testified that she first saw this letter when served with the tenant's evidence package.

The tenant testified that the previous tenants left refuse around the yard and that he has obtained estimates for loader work and labour to remove these items. The tenant stated that the furnace requires servicing at a cost of \$200.00 and that the sunroom floor should be repaired. The tenant stated that the sunroom exterior door is substandard and requires replacement.

The landlord testified that the tenants had access to the outbuildings and that she should not be held responsible for the costs the tenant is claiming. The landlord stated that the cleaning was completed prior to the tenants moving into the home but that a deck did require some work. The landlord confirmed that a move-in condition inspection was not completed. The landlord stated that she had attempted to assist the tenant but that by the third day of the tenancy their relationship had broken down and no further communication occurred.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I will first respond to the tenant's application to cancel the notice to end tenancy issued on November 2, 2009.

I note that the tenancy agreement indicates that rent is due on the 3rd of the month. The landlord has issued a notice for unpaid rent which includes a sum for November's rent that was not yet due on November 2, 2009. I find that on November 2, 2009 the tenant was in arrears in the sum of \$3,300.00 and that the \$800.00 paid to the landlord forms the deposit indicated as paid on the tenancy agreement. The tenant could reasonably have understood that he owed the landlord unpaid rent; therefore, I find that the Notice issued on November 2, 2009 is of full force and effect.

As the tenant's Application to cancel the Notice to End Tenancy is dismissed and the landlord has requested that the tenancy end, I find that that, pursuant to section 55(1) of the Act, the landlord is entitled to an order of possession that is effective two days after service to the tenant.

In relation to the tenant's monetary claim; 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.

I have no evidence before me that use of the shop was included as part of the tenancy agreement. The written tenancy agreement makes no reference to the shop. Section 6(3) of the Act states:

- 3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) **the term is not expressed in a manner that clearly communicates the rights and obligations under it.**

(Emphasis added)

In the absence of a clear communication of terms which include use of a shop I dismiss without leave to reapply the tenant's claim for loss related to the shop and repair costs. The landlord testified that the tenant had use of the buildings, but there are no clear terms outlining the purpose of this use, frequency or value of any use.

In relation to the theft of tires, I assign no liability to the landlord and dismiss this claim without leave to reapply. The tenant has not provided evidence that the landlord was responsible for this loss and the tenant has failed to properly mitigate the loss by purchasing insurance.

As the tenancy is ending the tenant's claim for estimated costs is dismissed without leave to reapply.

In relation to cleaning, painting and labour costs claimed by the tenant I find that the tenant has failed, on the balance of probabilities, to demonstrate that these costs were incurred. The tenant has not provided receipts for the paint or labour and I find that an older plywood floor would not be expected to be in the same condition as a floor that is covered with a more durable finish. The tenant's claim for these costs is dismissed without leave to reapply.

The tenant has requested return of the deposit paid to the landlord. The \$800.00 deposit will continue to be held in trust by the landlord and must be disbursed as required by section 38 of the Act.

There is no evidence before me that the landlord is required to complete any emergency repairs, repairs or that costs were incurred for sunroom carpet and these claims are dismissed without leave.

Conclusion

As I have determined that the tenant has failed to pay rent I find that the 10 Day Notice to End Tenancy for Unpaid Rent issued on November 2, 2009 is of full force and effect.

The tenant's Application for Dispute Resolution requesting cancellation of the Notice to End Tenancy is dismissed and, based upon the oral request of the landlord I have issued an Order of possession to the landlord, pursuant to section 55(1) of the Act.

The tenant's monetary claim is dismissed without leave to reapply.

The deposit held in trust by the landlord is to be disbursed as provided by section 38 of the Act.

I have enclosed a copy of a Guide for Landlords and Tenants in British Columbia for reference by each party.

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: December 2, 2009.

Dispute Resolution Officer