



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, LAT, MNDC, RR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Landlord requested an order of possession based on a 10 day Notice to End Tenancy for unpaid rent, a monetary order for unpaid rent, to keep all or part of the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

The Tenant requested an order to cancel the Notice to End Tenancy for unpaid rent, for compensation under the Act or tenancy agreement, an order for the Landlord to comply with the Act, to authorize the Tenant to change locks, to allow the Tenant to reduce rent for repairs, services or facilities not provided and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. I note the Tenant submitted evidence late and this was not considered. Only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Landlord entitled to the relief sought?

Is the Tenant entitled to the relief sought?

Background and Evidence

This tenancy began on March 1, 2010. The Agent for the Landlord testified the Tenant had problems paying his rent from the start. His first rent cheque was returned by the bank due to insufficient funds.

On May 2, 2010, the Landlord issued the Tenant a 10 day Notice to End Tenancy for unpaid rent of \$397.50, due on the first day of the month. The Tenant had failed to pay half of his rent for the month, as well as a late fee of \$25.00 and parking fee of \$5.00. The Agent for the Landlord testified that the Tenant had not paid his June 2010 rent either, in the amount of \$795.00, plus the parking fee of \$5.00.

The Tenant testified he had not paid the rent and alleges there is mould in the rental unit, the Landlord made a harassing phone call to him and there is a dispute over parking. For these and various other reasons, the Tenant has not paid the rent. He claims \$4,447.00 in compensation from the Landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Tenant's Application must be dismissed. The Tenant is prohibited from not paying rent under the Act in section 26(1):

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are two circumstances where the Tenant may have deducted all or a portion of his rent: if he had an order from a Dispute Resolution Officer authorizing it, or, if he had complied with the emergency repairs portion of the Act. I find that neither of these circumstances apply here, and therefore, the Tenant had no right or authority to withhold his rent. I further find the Tenant had insufficient evidence to prove any of his claims. Therefore, his entire Application is dismissed.

I allow the Application of the Landlord. The Tenant has failed to pay rent as required under the Act and tenancy agreement.

I find the Landlord is entitled to an order of possession and monetary compensation for unpaid rent.

The Agent for the Landlord requested immediate possession of the rental unit and was satisfied with an order of possession **effective 24 hours after service on the Tenant**. This order is enforceable in the Supreme Court of British Columbia. I allow the Landlord to serve a facsimile copy of the order of possession on the Tenant by posting it on the door of the rental unit. The Landlord must use an original order if enforcement is necessary.

I find the Landlord has established a total monetary claim of **\$1,312.50**, comprised of \$397.50 in rent for May, \$795.00 in rent for June, \$50.00 for two late payments fees, \$20.00 in parking fees, and \$50.00 for the filing fee for the Application.

I allow the Landlord to keep the security deposit of **\$397.50**, in partial satisfaction of the claim, and I grant the Landlord an order for the balance due of **\$915.00**.

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: June 17, 2010.

Dispute Resolution Officer