



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: *OPR, CNR, OPL, OLC, MNR, FF*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel the notice to end tenancy. Both parties attended the face to face hearing held in Burnaby and were given full opportunity to present evidence and make submissions.

During the hearing the tenant stated that he had plans to move out by August 31, 2010. The landlord agreed to allow the tenancy to continue until this date. Therefore the tenant's application to cancel the notice was moot and this hearing only dealt with the landlord's application for a monetary order for unpaid rent and the filing fee.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent and the filing fee?

Background and Evidence

The tenancy started on August 01, 2007. Rent is \$850.00 due on the first day of each month. The rental unit consists of a suite located in the basement of the landlord's home. The landlord occupies the upper floor.

The landlord stated that for the first year of the tenancy, the tenant paid rent regularly every month. The tenant last paid rent for August 2008 and has occupied the unit since then without paying any rent. The landlord stated that as of the day of the hearing, the tenant owed rent for 24 months. He stated that every time he asked the tenant for rent, the tenant threatened him. The landlord stated that instead of paying rent the tenant extorted him. In the interest of the safety of his family the landlord paid \$10,000.00 to the tenant on May 25, 2010.

The landlord stated that he moved out of his own house as both he and his spouse feared the tenants below. On May 26, the landlord reported the matter to the police and filed this application.

The tenant agreed that he paid monthly rent for the first year and stated that in September 2008, the landlord had some financial difficulties and requested the tenant to pay rent for the full year. The tenant stated that he did so in September 2008 and then again in September 2009. The tenant did not file any evidence to support his claim of having paid rent for a full year in one single payment. He stated that he paid in cash and did not have receipts as the landlord did not want to report rental income on his tax returns and therefore did not write receipts for rent.

The tenant denied extorting the landlord. To demonstrate that the landlord and tenant shared a cordial relationship, the tenant filed into evidence, birthday cards sent by the landlord to the tenant in January of this year. The landlord agreed that he had taped the cards to the tenant's door. The tenant also stated that just before Christmas 2009, he loaned the landlord, \$20,000.00 in cash. The tenant stated that he withdrew the cash from the bank but did not bring his statements to support his testimony. The landlord denied having received a loan from the tenant but agreed that he had paid the tenant \$10,000.00 in May this year. He stated that it was extortion money that he paid to the tenant and not repayment of a loan.

Analysis

During the hearing, the tenant agreed to move out by August 31, 2010. Pursuant to section 55(2), I am issuing a formal order of possession effective on or before 1:00 p.m. on August 31, 2010. The Order may be filed in the Supreme Court for enforcement.

Based on the sworn testimony of the both parties, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on June 20, 2010. The tenant stated that he had paid rent for a full year in September 2008 and September 2009 and therefore did not owe rent to the landlord.

However, the tenant did not have any documentary evidence to support his claim of having paid rent for 24 months in two lump sum cash payments.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant stated that he had paid rent for two years in two lump sum cash payments made in September 2008 and 2009. The tenant stated that he withdrew the money from his bank account, but did not have any evidence to support this. Since the landlord denies having received any rent for the past 24 months, I find that on a balance of probabilities, the tenant has not proven that he paid his rent annually in advance, in lump sums equivalent to the amount of rent for 12 months, each time. Therefore, I find that the landlord has established a claim in the amount of \$20,400.00 which is the equivalent of rent for 24 months. Since the landlord has proven his case he is also entitled to the recovery of the filing fee of \$100.00.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$20,500.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective on or before 1:00 p.m. on August 31, 2010. I also grant the landlord a monetary order in the amount of **\$20,500.00**.

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: August 17, 2010.

Dispute Resolution Officer