



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

This was an application by the tenant for a monetary order and an order to cancel a Notice to End Tenancy for unpaid rent. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing.

Issues(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Is the tenant entitled to a monetary order?

Background and Evidence

The rental unit is a strata title apartment. The tenancy began on March 1, 2010 for a fixed term ending February 28, 2011. Monthly rent is \$1,000.00. The tenant paid a \$500.00 security deposit on February 16, 2010. The agreement called for a further security deposit payment of \$150.00 that was not paid.

A Dispute Resolution Officer conducted a hearing with respect to this tenancy on June 22, 2010. In her written decision dated July 2, 2010 she ordered that a Notice to End Tenancy issued by the landlord be cancelled. She determined that the landlord had interfered with the tenant's quiet enjoyment of the rental unit by staying in the apartment for nine days from April 26, 2010 to May 4, 2010. She found that the tenant had been reimbursed \$150.00 and order that he landlord pay a further sum of \$300.00 for loss of she awarded the tenant the \$50.00 filing fee and granted a the tenant a monetary order

in the amount of \$350.00. The Dispute Resolution Officer also directed the landlord not to enter the rental unit excepts as permitted by section 29 of the *Residential Tenancy Act*.

The \$150.00 reimbursement found to have been given is referred to in a document signed May 1, 2010 in the presence of a Vancouver police officer. The document was signed by the landlord and the tenant and stated in part: "I N.R. agree to give a CAD\$150 deposit exempt to SG, the current tenant of the premises..."

According to the evidence I heard the tenant did not receive a \$150.00 reimbursement, from the landlord, but he was not required to pay a further security deposit amount of \$150.00, The tenant learned that the landlord was not entitled to claim a deposit greater than a half month's rent. The tenant withheld the sum of \$150.00 from the July rent payment. And the landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent dated July 22, 2010.

The landlord's lawyer wrote to the tenant on August 18, 2010. The lawyer delivered with her letter a two month Notice to End Tenancy for landlord's use. The Notice required the tenant to move out of the rental unit by October 31, 2010.

In addition to an order cancelling the Notice to End Tenancy for unpaid rent, the tenant requested a monetary order in the amount of \$500.00 and an order authorizing him to change the locks to the rental unit.

Analysis

At the oral hearing of the tenant's application I expressed my provisional opinion that the tenant, not having paid a deposit that exceeded one half month's rent, was not entitled to withhold that amount from rent, but he could deduct from rent the amount awarded by the July 2, 2010 decision and order. After the hearing I reviewed the July 2,

2010 decision and noted that the Dispute Resolution Officer stated as follows at page 6 of her hearing:

The landlord stayed with the tenant from April 26 until May 4 and received a \$150.00 reimbursement. I find that the landlord should reimburse the tenant rent for the number of days that he stayed there, less the amount already reimbursed, and the tenant should be entitled to double the balance for his loss of quiet enjoyment.

She ordered that the landlord pay the tenant pro-rata rent for his nine day stay; this amounts to \$300.00, she assumed, incorrectly as it turns out that the tenant had already been reimbursed \$150.00, leaving a balance of unpaid rent for the landlord's stay of \$150.00 and she ordered the landlord to pay double the \$150.00 balance. Clearly the Dispute Resolution Officer's intention was that the tenant receive total compensation for his loss of quiet enjoyment in the amount of \$450.00, plus the filing fee for his application.

The tenant interpreted the Dispute Resolution Officer's statement that he received a \$150.00 reimbursement as conferring a right to withhold \$150.00 from rent; he interpreted the May 1st document signed by the landlord in the presence of the police as adding \$150.00 to his security deposit. I find that although the tenant was not entitled to withhold \$150.00 from rent as an overpayment of deposit because he did not in fact pay more than \$500.00 as a deposit, the effect is that his withholding has effectively provided the reimbursement he was assumed by the Dispute Resolution Officer to have received and upon which she predicated her award.

I find that the tenant has, by the \$150.00 withholding, received the reimbursement intended or assumed by the previous decision. The tenant is still entitled to be paid the

sum of \$350.00, being the amount of the outstanding monetary order and he may deduct this sum from a future instalment of rent.

I dismiss the tenant's application for a further monetary order. Upon the evidence he has not suffered any damages or loss of enjoyment of the rental unit since the decision of July 2, 2010 was pronounced. The tenant said that the additional Notices to End Tenancy constitute harassment. I do not accept his argument on this point. If the landlord issues additional and spurious Notices to End Tenancy they might constitute harassment but I do not find the Notices I have dealt with in this decision to fall into that category.

The tenant requested reimbursement of his \$50.00 filing fee for this application. I decline to award the filing fee because it was not made plain to the landlord why the tenant purported to withhold rent from the July rent payment; the predictable result was the issuance of a Notice to End Tenancy. The Notice to End Tenancy dated July 22, 2010 is, however, cancelled. The tenancy will continue.

The landlord submitted during the hearing that he was entitled to amounts for late payments of rent as provided by the tenancy agreement. The agreement provides for a late payment fee of \$75.00 whenever rent is paid late. The Residential Tenancy Regulation provides that a late payment fee may not exceed \$25.00. Because this provision in the agreement calls for a payment in excess of the allowed amount the landlord's late payment clause is void and unenforceable.

With respect to the two month Notice to End Tenancy dated August 18, 2010, the tenant has not applied to cancel it, but I find that it is not necessary for the tenant to make an

application to cancel the two month Notice because as I advised the parties at the hearing, the August 18th Notice for landlord's use is void. Section 49 (2)(c) of the *Residential Tenancy Act* provides that if the tenancy agreement is a fixed term tenancy agreement, the landlord may not end the tenancy for landlord's use on a date that is earlier than the date specified as the end of the tenancy. The landlord therefore may not end this tenancy for landlord's use before February 28, 2011.