



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNDC, MNSD, FF
OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications from the landlord and tenant. The application by the tenant is to cancel a Notice to End Tenancy for Unpaid Rent, a monetary order for compensation, damage or loss, return of the security deposit and recovery of the filing fee. The application by the landlord is for an Order of Possession for Unpaid Rent, a monetary order for unpaid rent, to keep all or part of the security deposit, compensation for damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing and gave affirmed testimony.

Issues to be Decided

Whether either party is entitled to the above under the Act.

Summary of Background and Evidence

This tenancy started in 2006 with monthly rent of \$750.00 and the tenant paid a security deposit of \$500.00. On October 12, 2010 the landlord served the tenant with a Notice to End Tenancy for Unpaid Rent.

The landlord testified that tenant still owes \$750.00 in unpaid rent for the month of November 2010. The landlord stated that the first year of the tenancy was a 12 month fixed term but since that time the tenancy has been month to month with no signed tenancy agreement in place. The landlord also testified that when renovations were being done on the property the past 4 months they did not work past 10PM at night.

The tenant in this hearing, informed the landlord that he had vacated the rental unit yesterday, November 4; the landlord was unaware that the tenant had vacated. The tenant stated that he had become very frustrated with the noise the past 4 months and that is why he withheld November's rent. The tenant had very limited evidence in regards to the noise issue and had not ever contacted the landlord in writing regarding his concerns.

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It was explained to the tenant that per the Act withholding rent is not the proper way to address issues associated with the rental unit and that the tenant have filed for dispute resolution to have his concerns addressed.

It was explained to the landlord that per the Act a landlord may not ask for more than ½ month's rent for the security deposit. I

It was also explained to the landlord that the Residential Tenancy Regulation states that a landlord may not ask for administration fees unless the tenancy agreement provides for that fee.

Analysis

Based on the documentary evidence and testimony I find that the tenant has not proven that there has been excessive noise the past 4 months of his tenancy. I dismiss the tenant's application without leave to reapply.

As for the monetary order, I find that the landlord has established a claim for \$750.00 in unpaid rent. The landlord's request for administrative fees is dismissed without leave to reapply as there is no written tenancy agreement in place. As the tenant has vacated the rental unit the request for an order of possession is dismissed.

Neither party is entitled to recovery of the \$50.00 filing fee.

Conclusion

The tenant's application is dismissed without leave to reapply.

I find that the landlord has established a monetary claim for \$750.00. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's \$500.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of \$250.00 (\$750.00-\$500.00=\$250.00)

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$250.00**. If the amount is not paid by the tenant, the order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.



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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: November 5, 2010

Dispute Resolution Officer