



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR, MNDC, MNSD, OLC, ERP, FF

Introduction

This is the Tenant's application to cancel a Notice to End Tenancy for Unpaid Rent; compensation for damage or loss; for return of the security deposit; for an Order that the Landlord comply with the Act and make emergency repairs for health or safety reasons; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

Background and Evidence

This tenancy started on May 1, 2010. Monthly rent is \$1,000.00 due on the first day of each month. The Tenant paid a security deposit in the amount of \$500.00 at some time in April, 2010.

A copy of the Notice to End Tenancy was entered in evidence. The Notice to End Tenancy was dated November 3, 2010 for unpaid rent in the amount of \$2,000.00 that was due on November 1, 2010. The Landlord's agent testified that the Notice to End Tenancy was handed to the Tenant on November 2, 2010 at the rental unit. The Landlord's agent could not explain why the Notice was dated November 3, 2010, and served November 2, 2010, but believed it was issued on November 2, 2010.

The Tenant gave the following testimony and documentary evidence:

The Tenant testified that he paid the outstanding rent on November 2, 2010. The Landlord's agent agreed that the outstanding rent had been paid in full.

The Tenant testified that on November 3, 2010, he gave the Landlord notice that he would be moving out of the rental unit on December 2, 2010. The Landlord's agent testified that the Landlord had accepted the Tenant's late notice, for an end-of-tenancy date November 30, 2010, at 12:00 noon.

The Tenant testified that he noticed bedbugs and cockroaches in the rental unit in early September, 2010. He told the Landlord, who sprayed the rental unit on September 20, 2010 for bedbugs. The Tenant testified that there was supposed to be a second spraying for bedbugs 10 days later, but it did not happen. A copy of the Tenant's letter to the Landlord advising about the bedbugs and cockroaches, dated September 7, 2010, was entered in evidence.

The Tenant testified that he discovered mice in the rental unit on September 22, 2010. He told the Manager about the mice on October 1, 4, 12 and 26, 2010. The Tenant wrote to the Landlord on October 27, 2010, advising about the mice and requesting treatment for bedbugs, mice and cockroaches. In early November, 2010, the Landlord attended to exterminating the mice and the cockroaches, but there has been no secondary spraying for bedbugs.

The Tenant testified that he has not seen any bedbugs for about a month, but that he knows they can be dormant for long periods of time.

The Tenant is seeking a monetary award of \$1,000.00, comprised of return of his \$500.00 security deposit and \$250.00 for the two months during which there was no treatment for the bedbugs.

The Landlord's agent gave the following testimony and documentary evidence:

The Landlord's agent testified that she started working for the Landlord on October 24, 2010.

The Landlord's agent testified that treatments for bedbugs and cockroaches cannot be done at the same time. She stated that there was no manager on site at the time to do

the second spraying for bedbugs 10 days after the first treatment on September 20, 2010.

The Landlord's agent testified that the Landlord decided to treat the rental unit for bedbugs on December 6, 2010, once the Tenant has moved out.

Analysis

The parties agreed that the outstanding rent was paid within the 5 days allowed under Section 46 of the Act. Therefore the Notice to End Tenancy for Unpaid Rent is cancelled.

The Tenant seeks return of the security deposit. This portion of the Tenant's application is premature. The Tenant's application for return of the security deposit is dismissed with leave to reapply. The security deposit remains available, on application by either party, and must be dealt with in accordance with the provisions of Section 38 of the Act.

The Tenant and the Landlord reached a mutual agreement that the tenancy would end on November 30, 2010. The tenancy is ending and therefore the Tenant's application for an Order that the Landlord comply with the Act and make emergency repairs for health or safety reasons is dismissed.

The Landlord was advised in writing about the cockroaches and bedbugs on September 7, 2010. The Landlord treated the rental unit for bedbugs on September 20, 2010, but did not follow up with a second treatment. The Landlord has no intention of treating the rental unit for bedbugs until after the Tenant moves out. I find that the Landlord did not comply with Section 32 of the Act and that the Tenant is entitled to compensation. The Tenant seeks compensation in the amount of \$250.00 for the two months that the Landlord failed to comply with the Act, and I allow this portion of the Tenant's claim.

The Tenant has been partially successful in his application and is entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Tenant's application for return of the security deposit is dismissed with leave to re-apply.

I hereby provide the Tenant with a Monetary Order in the amount of \$550.00 representing compensation for damage or loss and recovery of the filing fee from the Landlord. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (small claims) and enforced as an Order of that Court.

The remainder of the Tenant's application is dismissed.

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 10, 2010.
