



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, MNDC, AAT, LAT, OPR, MND, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside notices to end this tenancy, a monetary order and orders allowing him access to the rental unit and authorizing him to change the locks. The landlord made a cross-application for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issues to be Decided

Should the notices to end tenancy be set aside?
Is the tenant entitled to a monetary order as claimed?
Is the landlord entitled to a monetary order as claimed?
Should the tenant be permitted to change the locks to the rental unit?
Should the landlord be ordered to grant the tenant access to the unit?

Background and Evidence

The parties agreed that the tenancy began on December 1, 2010, that rent was set at \$1,100.00 per month payable in advance on the first day of each month and that the tenant paid a \$500.00 security deposit.

The tenant was served with 2 notices to end tenancy for unpaid rent. The first was received on January 1 for unpaid rent for the month of January (the "First Notice"). At the hearing I advised the landlord that a notice to end tenancy for unpaid rent could not be served on the date rent was due as it was not yet late at that point. The second notice was received on or about January 10 (the "Second Notice").

The tenant acknowledged that he did not pay rent in the month of January but testified that he did not do so because the landlord told him he needed to evict his roommate and without that person's contribution to the rent, he could not afford to pay. The tenant testified that the landlord advised that his roommate had committed a theft in the

building and that the roommate, who was not part of the tenancy agreement, could not continue to reside in the unit. The tenant stated that he agreed that the roommate should leave and he told the roommate he had to vacate.

The parties agreed that the tenant's fob, which gave him access to the building and to the parking area, was disabled from January 1-12. The tenant claimed that he lost work because he was not able to access his vehicle and that he would have been able to make a significant amount of money by working in Fort McMurray in January. The landlord submitted evidence showing that the tenant had successfully removed his truck from the parking area on several occasions during the first half of January.

Analysis

I find that the First Notice cannot be effective as it was served before the rent was overdue. I therefore order that the First Notice be set aside and of no force or effect.

I find that the tenant chose to evict his roommate as he apparently believed the accusations which were levelled against him. The tenant was contractually obligated to pay rent on the first day of each month and failed to do so. I find that the tenant had no legal basis on which to withhold the rent and accordingly I find that the landlord has established grounds to end the tenancy. I dismiss the tenant's application to set aside the Second Notice and I grant the landlord an order of possession which must be served on the tenant. In the event the tenant does not comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

As the tenancy is ending, it is unnecessary to address the tenant's claims for orders allowing him access to the rental unit and authorizing him to change the locks and accordingly those claims are dismissed.

I find that the landlord is entitled to recover \$1,100.00 in unpaid rent for January as well as the \$50.00 filing fee paid to bring her application and I award her \$1,150.00. I order the landlord to retain the \$500.00 security in partial satisfaction of her claim and I grant her a monetary order under section 67 for the balance of \$650.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The tenant bears the burden of proving his monetary claim on the balance of probabilities. I find that the tenant was able to remove his truck from the parking area in the time period in question and I therefore am not satisfied that he lost work as a result of not being able to access the truck. Further, the tenant provided no evidence that work was available to him during that time period. The monetary claim is dismissed.

Conclusion

The First Notice is set aside. The remainder of the tenant's claim is dismissed.

The landlord is granted an order of possession and a monetary order for \$650.00. The landlord may retain the security deposit.

Dated: January 26, 2011

Residential Tenancy Branch