



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, ERP, RP, PSF, LRE, RR, FF

Introduction

This conference call hearing was convened in response to the tenant's application for a monetary order for compensation or loss under the Act, for reduced rent, to order the landlord to comply with repairs, and to recover the filing fees associated with this application.

Both parties attended the hearing, provided affirmed testimony and made oral submissions.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Background and Evidence

The rental unit consists of a portion of a basement in a newly built single family home located in Nanaimo. The tenancy was void of any written agreement.

The salient portions of this matter are as follows:

The landlord testified that her friend urged her to allow the tenant to move in at her residence because he had no place to stay.

The landlord said that she originally refused, but out of compassion eventually agreed to meet the tenant. The landlord said that she showed the tenant the layout of the unit, and told the tenant that it was more or less intended as a recreation room, and that there was no fridge and stove. The landlord said that tenant accepted the conditions, that the parties verbally agreed on a rental of \$400.00 per month, and that the tenancy started on December 1st, 2010. On December 28th, 2010, the landlord issued the tenant a 10 Day Notice to End Tenancy to take effect January 7th, 2011 for unpaid rent. The landlord also said that she wanted to end the tenancy because the tenant smokes in the unit, leaves all the lights on day and night, and leaves the unit unlocked when he leaves.

The tenant testified that on November 27th, 2010, he gave the landlord \$200.00 in cash towards the December rent, and another \$145.00 in cash on December 1st, 2010. The tenant said that he did not pay the balance of \$55.00 owed for rent because the landlord did not give him receipts. In addition, the tenant said that he did not use the shower because of exposed electrical wires, and that a sump pump used for sewage disposal was located in the kitchen. The tenant said that the landlord promised him a fridge and a stove and that the lighting is inadequate. Although the landlord wanted a \$200.00 security deposit, the tenant refused because he would not get a receipt. The tenant said that on December 28th, 2010, he found the Notice to End Tenancy for unpaid rent posted on his door. The tenant said that he does not want to remain at the unit but he cannot afford relocating expenses. He said that he called a city inspector who identified issues with the unit.

The landlord claimed that the tenant's evidence is false and that she never promised him appliances. She stated that she wanted the tenancy to end on the date specified on the 10 day Notice to End Tenancy.

Analysis

There was no written tenancy agreement however I accept that a tenancy started on December 1st, 2010. The parties were at odds with the versions of its terms and conditions; accordingly, I find insufficient evidence to prove the tenant's claim against the landlord. I accept that the property was new and that a city inspector attended the rental unit. The landlord stated that the inspector identified only very minor issues, which would be consistent with a newly constructed residence. These issues did not make the tenant's conditions unliveable, giving that he accepted to move into a recreation room. The tenant said that he cannot afford moving costs. Since I cannot establish whether the landlord has breached a material term of the agreement, I dismiss the tenant's claim and the tenant will be responsible for moving his belongings.

Section 26(2) of the *Residential Tenancy Act* specifies that the landlord must provide a receipt for rent paid in cash. Section 26(1) of the *Act* also specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*. Therefore, the landlord was justified in serving the tenant with a Notice to End Tenancy for unpaid rent, whether or not the tenant received a receipt for partial payment of the rent.

At the hearing, an opportunity for an informal resolution to this matter was provided however the parties could not reach an agreement. Section 60(1) of the *Act* provides for the landlord to make her own application for dispute resolution over matters related to the tenancy within two years after the tenancy ends. The landlord can submit her evidence at that time.



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Conclusion

The tenant's claim is dismissed in its entirety.

The landlord's Notice to End Tenancy is upheld and I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

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: January 11, 2011.

Residential Tenancy Branch