

DECISION

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

Introduction

There is an application by the Landlord for an order of possession resulting from a 10 day notice to end the tenancy for unpaid rent and utilities, a request for a monetary order for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee. There is a cross application by the Tenant filed to allow the Tenant more time to make an application to cancel a notice to end tenancy, to cancel a notice to end the tenancy for unpaid rent or utilities and a request for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Both parties attended the hearing by conference call and gave affirmed testimony. The Tenant states that he does not have a mailbox to have documents and notices delivered to him. Copies of any decisions or orders for the Tenant are to be picked up at the Burnaby RTB Office.

Issue(s) to be Decided

Is the Tenant entitled to more time to make an application to cancel a notice to end the tenancy?

Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to an order of possession resulting from a 10 day notice to end the tenancy for unpaid rent or utilities?

Is the Landlord entitled to a monetary order for damage to the unit, site or property?

Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Is the Landlord entitled to a monetary order to retain all or part of the security deposit?

Background and Evidence

The Landlord states that he served the Tenant by posting a 10 day notice to end the tenancy for unpaid rent on December 23, 2010, even though the notice shows that it was served in person. The Tenant disputes that he received the notice. The Landlord also states that he served a second 10 day notice to end the tenancy for unpaid rent and utilities on January 7, 2011, even though the notice does not display how it was

served. The Tenant confirms receiving this 2nd notice. The Landlord has not served the Tenant with any copies of the evidence submitted because he states that the Tenant was previously served copies of these documents during his tenancy. The Landlord states according to the 10 notice to end the tenancy and in his direct evidence that the Tenant is in arrears for rent for \$2,000.00. The Tenant admits to not paying the rent because of a dispute he has with the Landlord for services rendered in exchange for credit on his rent. The Landlord disputes this and the Tenant cannot provide any evidence to support his claim. The Landlord also claims that the Tenant is in arrears for his share of the BC Hydro Utility bill of \$272.98. The Landlord claims that the Tenant is responsible for 60% of the \$454.98 bill. The Landlord is unable to provide a signed tenancy agreement. The Tenant states that the tenancy was a verbal one and disputes the 60% split arrangement for the utilities.

The Tenant has filed an application for dispute resolution on January 25, 2011 to cancel a notice to end the tenancy received on January 7, 2011. The Tenant has applied for more time to allow the Tenant to file an application to cancel the notice to end the tenancy. The Tenant has not provided any details or evidence for any reasons to extend the allowable time to file an application. The Tenant states that he served the Landlord with a copy of his application on the date of this hearing by placing a copy of the application on the windshield of the Landlord's truck.

Analysis

The Tenant has failed to provide any details for any reasons to extend the time to allow him to apply for dispute resolution. I find that Tenant did not file an application within the allowed 5 days for dispute resolution upon being served with the notice. The Tenant has not properly served the Landlord with his application. The Tenant has not filed any evidence to support his claim. The Tenant has not provided any details in his calculations of the \$2,000.00 monetary claim. For all of the above reasons, I find that the Tenant has failed to properly follow the procedures set out and as such dismiss the Tenant's application.

The Landlord has not satisfied me that he properly served the Tenant with the 10 day notice to end the tenancy. It is only through the Tenant's direct evidence in that he admits receiving the 2nd 10 day notice to end the tenancy for unpaid rent and utilities that I find that the 2nd notice was properly served. The Tenant admits to not paying the rent for a dispute over services rendered for credit to his rent. The Tenant does not have any written consent to do so either from the Landlord or from an order from the Residential Tenancy Branch. The Tenant is conclusively presumed to accept that the tenancy has ended on the date on the notice. I am satisfied that the Landlord is entitled

to an order of possession resulting from a 10 day notice to end the tenancy for unpaid rent. Based upon the above facts, I find that the Landlord is entitled to an order of possession. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The Tenant has admitted to not paying the rent, the Landlord has established a claim for \$2,000.00 in unpaid rent.

The Landlord has not provided any details of outstanding utilities from BC Hydro, nor any details of the verbal agreement concerning the payment of utilities. The Tenant disputes the Landlord's claim. In the absence of any supporting evidence such as a signed tenancy agreement, I find that the Landlord has failed to establish a claim for the utilities.

The Landlord is entitled to recovery of the \$50.00 filing fee having been successful in his application. I grant the Landlord an order under section 67 for the balance due of \$2,050.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

As neither side has provided any evidence direct or otherwise concerning the security deposit, the Landlord's claim to it is dismissed and should be dealt with in accordance to the Residential Tenancy Act at the end of the tenancy.

Conclusion

The Tenant's application is dismissed.

The Landlord is granted an order of possession and a monetary order for \$2,050.00.

The Landlord's application to keep all or part of the security deposit 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: February 1, 2011.

Residential Tenancy Branch