



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT, CNR, MNDC, OLC, ERP, RP, LRE, OPT, RR, O
OPR, MNR, MNDS, FF

Introduction

This hearing was convened in response to applications filed by both the tenant and the landlord.

The tenant seeks:

1. More time to make this application;
2. To cancel a Notice to End Tenancy for Unpaid Rent;
3. A monetary order for compensation for damage or loss;
4. An Order that the landlord comply with the Act;
5. An Order that the landlord make repairs
6. An Order that the landlord make emergency repairs;
7. An Order restricting the landlord's right to enter the rental unit;
8. An Order of Possession of the rental unit;
9. An Order that the tenant be allowed to reduce his rent for repairs or services not provided

In total the tenant seeks a monetary award of \$16,900.00

The landlord seeks:

1. An order of possession based on a Notice to End Tenancy given for unpaid rent;
2. A monetary Order for unpaid rent and utilities;
3. An Order allowing the landlord to retain the security deposit; and
4. Recovery of the filing fee paid for this application.

In total the landlord seeks a monetary award of \$2,057.18.

All parties appeared and gave evidence under oath.

Issue(s) to be Decided

Is either party entitled to the Orders sought?

Background and Evidence

The tenant states that he was served with a Notice to End Tenancy for unpaid rent in person on March 10, 2011. The tenant testified that he did not make an application to dispute the notice until April 1, 2011 because he did not know how to. The tenant agrees that he has not paid rent for either March or April 2010. He states that this is because he does not have the money.

The tenant testified that the hot water tank in the rental unit exploded causing damage to his goods and furnishings. The tenant testified that the landlord did not have it fixed properly. The tenant testified that he has not supplied evidence of the goods he says were damaged when the hot water tank exploded but he could supply evidence in the future. The tenant testified that he had valuable rugs from Iran that were ruined.

The tenant testified further that the landlord evicted him from the rental unit illegally for 4 days during which time he could not access the rental unit. The tenant says the landlord is always harassing him and knocking on his door.

The landlord agrees that the hot water tank exploded in June 2010 causing some water to flow into the rental area. The landlord testified that she had a repair person install a new tank immediately. The landlord submitted an invoice for the cost of repairs to the hot water tank. The landlord says she offered to supply the tenant with a carpet shampoo machine to clean his suite but he declined.

With respect to locking the tenant out of the rental unit the landlord testified that she served the tenant with the 10 day Notice to End Tenancy for unpaid rent on March 10, 2010 and the tenant told her he would vacate at the end of March. The landlord says that on or about March 31, 2010 the upstairs tenant, who is the landlord's sister, called to say the doors to the rental unit were wide open. The landlord attended and inspected the suite, she testified that the suite was in disarray and it looked as though the tenant had abandoned. The landlord says to secure the tenant's goods she locked the doors and windows. The landlord says the tenant did not contact her until 4 days later and she allowed him into the suite even though he had not paid rent for April at all.

With respect to the claims of harassment the landlord says this is not so. The landlord states that the tenant never paid his rent on time and she was forced to knock on his door and ask for the rent frequently.

Analysis

The tenant's application seeking to cancel the Notice to End Tenancy given for unpaid rent was not filed in time. I have no authority to extend the time limit except in extraordinary circumstances and the tenant has failed to provide evidence of an extraordinary circumstance that prevented him from filing in time. Further, the evidence of both parties is that the tenant has not paid rent for either March or April 2011 in which case I would not have cancelled the Notice to End Tenancy in any event. The landlord has requested an Order of Possession and she is entitled to that order because the tenant has not paid his rent.

The landlord has agreed that the tenant did not have access to his rental unit for 4 days during which time she locked the rental unit to secure his goods believing he had abandoned the rental unit. I will therefore allow the tenant a monetary award in the sum of \$120.00 representing 4 days rent because the tenant did not have the use of the rental unit for those days.

With respect to the tenant's claim for \$16,900.00 he has supplied insufficient evidence to show that he suffered losses at all or that his losses, if any, were as a result of the landlord's deliberate action or inaction. I therefore dismiss his claim in this regard.

As this tenancy is ending I dismiss the balance of the tenant's claims seeking:

- An Order that the landlord comply with the Act;
- An Order that the landlord make repairs
- An Order that the landlord make emergency repairs;
- An Order restricting the landlord's right to enter the rental unit;
- An Order of Possession of the rental unit; and
- An Order that the tenant be allowed to reduce his rent for repairs or services not provided.

With respect to the landlord's claims I will allow her claim for unpaid rent for March and April. I decline to award the landlord's claim for utilities because she has failed to supply a written tenancy agreement showing the tenant was to pay for utilities and the tenant says he did not agree to pay for utilities. As I am making a monetary award in

favour of the landlord i will allow her to retain the security deposit in partial satisfaction of this award. As she has been mostly successful in her claim I will also allow her to recover the filing fee paid for this application.

I will make the following monetary award in favour of the landlord:

| | |
|------------------------------------------------------------------|-----------|
| March rental arrears | \$900.00 |
| April rental arrears | 900.00 |
| Less award made to tenant | -120.00 |
| Less the security deposit paid May 1, 2009 (no interest accrued) | -450.00 |
| Filing Fee | 50.00 |
| Total monetary award payable by tenant to landlord | \$1280.00 |

Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

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*.