

DECISION

Dispute Codes OPC, MNR, FF, MT, CNC,MNDC, RR, O

Introduction

There are applications filed by both parties. The Tenant has filed an application to allow for more time to make an application to cancel a notice to end tenancy, if allowed, to cancel a notice to end tenancy for cause, a monetary order request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided. The Landlord has filed an application for an order of possession which results from a 1 month notice to end tenancy for cause and a 10 day notice to end tenancy for unpaid rent. The Landlord is also seeking a monetary order for unpaid rent and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

At the beginning of the hearing, the Tenant stated that he was also pursuing a monetary action against the Landlord in the Supreme Court of British Columbia. The Landlord stated that he was not yet served. The Tenant states that service should be completed any day. The Tenant states that he was "just covering his bases," by filing for the same issues in both venues. The Tenant states that he wishes to pursue the monetary issue in court. I find that as the Tenant has chosen to pursue the monetary issue in the court, that the Tenant's application before the Residential Tenancy Branch is dismissed without leave to reapply. I find that the Residential Tenancy Branch has jurisdiction to deal with an order of possession over this Tenancy and the hearing shall proceed on this issue.

The Tenant states that there was some confusion over him receiving the original notice of hearing package on RTB file no. 773623. The Landlord has taken no position on this issue. I am satisfied based upon a balance of probabilities that the Tenant be allowed more time to file his application for dispute. The Tenant's application for dispute to cancel a notice to end tenancy for cause will be heard.

Issue(s) to be Decided

Is the Tenant entitled to an order to cancel a notice to end tenancy for cause?

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

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

Background and Evidence

Both parties have attended the hearing and have referred to the evidence submitted by both parties. The Tenant states that he was not served with the Landlord's evidence package. I find that the Tenant is not biased by the lack of service of the Landlord's evidence. Upon exploring the evidence, the Tenant states that he did not receive the evidence package, but that he did receive the 1 month notice to end tenancy for cause and the 10 day notice to end tenancy for unpaid rent. The Landlord also included a copy of the signed tenancy agreement. The Tenant disputes receiving a copy of the Tenancy Agreement, but confirms that he signed a tenancy agreement and that the terms indicated is what he agreed to in the submitted signed and dated copy.

Both parties agreed that this Tenancy began on December 15, 2010 on a month to month basis. The monthly rent is \$800.00 payable on the 1st of each month and a security deposit of \$400.00 was paid on December 15, 2010.

The Tenant disputes the Landlord's claims that he was repeatedly late paying rent. The Landlord has failed to provide any evidence that the Tenant failed to pay rent repeatedly.

The Landlord states that the Tenant failed to pay rent of \$800.00 on July 1, 2011 as stated in the 10 day notice to end tenancy for unpaid rent which was served on July 2, 2011. The Tenant confirms receipt of the notice. The Tenant also confirms not paying the rent. The Tenant stated that he did not have a court order or an order from the Residential Tenancy Branch allowing him to withhold the rent. The Tenant stated that he did not file an application for dispute or pay the rent within the allowed timeframe.

Analysis

Based upon the testimony of both parties, I am satisfied that each was properly served with the notice of hearing documents and that each has had proper notice of the evidence submitted.

I find that the Landlord's 1 month notice to end tenancy for cause has not been established and set aside the notice. The Tenant's application to cancel the notice is granted.

I am satisfied that the 10 day notice to end tenancy for unpaid rent was properly served by the Landlord's agent as confirmed by the Tenant. The Tenant confirms the unpaid rent or filing an application for dispute resolution. The Tenant is presumed to

conclusively to accept that the Tenancy ended on the effective date of the notice. The Landlord is granted 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.

As the Tenancy is at an end, I dismiss the Tenant's application to reduce rent for repairs, services or facilities agreed upon but not provided. The Tenant has failed to provide any evidence of loss or entitlement.

As for the Landlord's monetary order request, I am satisfied based upon the Tenant's direct testimony that he did not pay rent. The Landlord has established a claim for the unpaid July 2011 rent of \$800.00. The Landlord is also entitled to recovery of the \$50.00 filing fee. I grant the Landlord a monetary order for the balance due of \$850.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant's application to cancel the notice to end tenancy for cause is granted. The Landlord is granted an order of possession and a monetary order for \$850.00.

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: July 22, 2011.

Residential Tenancy Branch