



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, DRI, CNC, RP, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlord: as an application for an Order of Possession for unpaid rent, and an Order of Possession Monetary for Cause; a Monetary Order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement ; and to recover the filing fee associated with his application.

By the tenant: as an application for cancellation of the Notice to End Tenancy for Cause, to dispute an additional rent increase; for the landlord to make repairs to the unit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

It is my decision that I will not deal with all the dispute issues that the tenant has placed on his application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the tenant's request to set aside, or cancel the landlord's Notice to End Tenancy for Cause, and I dismiss the balance of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Is the tenant entitled to cancellation of any of the Notices to End Tenancy issued by the landlord?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the month to month tenancy started on July 1st, 2008. The rent is \$945.00 per month and the tenant paid a security deposit of \$450.00.

In her documentary evidence, the landlord provided business records showing that the tenant was late paying rent every month in 2011, including rent cheques returned NSF from the bank for April and May 2011.

The landlord testified that as evidenced by her records, the tenant is continuously late paying rent. She stated that the tenant stopped payment for the July 2011 rent cheque and that she did not accept the rent cheque for August.

The landlord provided copies of a 10 Day Notice to End Tenancy for unpaid rent served on July 6th, 2011, and a 1 Month Notice to End Tenancy for repeatedly making late rent payments served on June 27th, 2011.

The landlord's monetary claim of \$1890.00 is for unpaid rent for July and August 2011.

The tenant did not disagree with the two NSF cheques for which he received notice from the landlord. He testified that he paid cash the other months and that he did not receive any notice from the landlord for being late, and therefore did not think that it was a problem. He stated that he stopped payment for July rent because the landlord cut off his water supply. He said that he has wanted the landlord to do certain repairs and that he stopped the rent cheque for July in order to stimulate the landlord to take action.

Analysis

Section 26(1) of the *Act* 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*. If the tenant had concerns with the landlord's failure to address his concerns, a remedy would have been to seek assistance through the Residential Tenancy Branch or to file for dispute resolution; in this matter the tenant chose to withhold rent.

Based on the parties' undisputed portions of their testimony, I am satisfied that the tenant has been consistently late making rent payments, and that rent was not paid for July and August 2011. The tenant's argument that the landlord did not issue notices for being late when paying cash does not discharge the tenant's statutory and contractual obligations. There was no evidence before me that the landlord agreed at any time for the tenant to pay rent late. I find that the landlord had grounds to issue the 10 Day and the 1 Month Notice to End Tenancy. The Notices are therefore valid and of full force, and I find that the landlord is entitled to a monetary order for unpaid rent as claimed.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the Order is served upon the tenant. This Order must be served on the tenant and if necessary, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I authorize the landlord to retain the tenant's \$450.00 security deposit for a balance owing of \$1440.00.

Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$1490.00.

The tenant's application to cancel the Notice to End Tenancy 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: August 05, 2011.

Residential Tenancy Branch