



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

By the tenant: as an application for more time to make an application to cancel a Notice to End Tenancy; to cancel a 10 Day Notice to End Tenancy; to order the landlord to make repairs to the unit; and to recover the filing fee associated with this application.

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

By virtue of the tenant's application and this hearing, it is not necessary that I consider his application for more time to cancel the notice to end tenancy.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the notice to end tenancy?

Is the tenant entitled to an order for the landlord to make repairs to the rental unit?

Is the tenant entitled to recover the filing fee?

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 keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. The parties did not dispute the following; there was no written tenancy agreement; the month to month tenancy started in September 2009; the rent is \$1200.00 payable on the first of each month; and the tenant paid a security deposit of \$600.00. Condition inspection reports were not completed at the start and the end of the tenancy.

Landlord K.R. testified that during the 3rd week of June 2011 the tenant informed them that he purchased a used couch that was infected with bedbugs and that he has a friend who is a licensed exterminator who could take care of the problem immediately for \$300.00. K.R. stated after a week the tenant's friend had not attended yet. She said that she was unclear if he was licensed and that she undertook to take care of the problem herself.

The tenant said that the landlord's cancellation of his friend caused unnecessary delay. He said that he did not know why he told the landlord that the couch was bug infested because he had been bitten before purchasing the couch.

He did not dispute withholding rent at that point, and that he owes full rent for July, August and \$150.00 from previous 2011 arrears. He said that the landlords retaliated by cancelling the exterminator, and that they left for Europe without giving him contact information.

In his documentary evidence, the tenant provided in part three letters from previous tenants to support that the problems with the unit have never been addressed by the landlord. The tenant also provided a copy of the 10 Day Notice to End Tenancy which he states that he received from the landlord on July 22nd, 2011.

K.R. said that they were gone from July 1st to July 11th, and that they gave the tenant a 10 Day Notice to End Tenancy on July 21st. She stated that since the problem was caused by the tenant, she relied on the Residential Tenancy Branch's Guide stating that it is the tenant who must repair any damage caused by the tenant.

Analysis

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter said that he received the notice on July 22nd, 2011 and therefore he had until July 27th to make an application for dispute resolution. The tenant did not file until July 29th and therefore the tenant's statutory time line is expired.

Furthermore, 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*.

For the above noted reasons, the landlord is entitled to an Order of Possession and the tenant's application is dismissed.

Turning to the landlord's claim; before I can make an order for compensation under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the *Act*, regulation,

or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord to prove his claim against the tenant.

Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss; this means that even if a party fails to do his due diligence, it does not relieve the other party from his statutory obligation to take reasonable steps to address the problem, to mitigate his loss, and thus comply with the Act. To date the house has not been fumigated; the \$1400.00 claim is based on a quote and therefore this portion of the claim, which ought to have been resolved by now, remains premature. Furthermore, there was no evidence before me from the landlord such as condition inspection reports, photographs, receipts or invoices. In the absence of more substantive evidence the landlord has not met the burden of proof and I dismiss the aspect of his application for repairs, loss or damage.

Concerning the unpaid rent, based on the parties' testimony I accept that the tenant withheld rent. As stated earlier the tenant has no authority to withhold rent; a remedy for the tenant would be to seek assistance through dispute resolution to resolve the issue, if the landlord fails to respond and fix the problem. I find that the landlord is entitled to recover the rent for the months of June, July and August as claimed.

Conclusion

The tenant's application is dismissed.

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$2550.00. I authorize the landlord to retain the tenant's \$600.00 security deposit for a balance owing of \$1950.00. Since the landlord was partially successful, I award the landlord partial recovery of the filing fee for \$25.00. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$1975.00.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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 30, 2011.

Residential Tenancy Branch