



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, FF
Tenant: CNR

Introduction

This hearing was convened by way of conference call in response to applications filed by the landlord and by the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities.

The hearing did not conclude on July 26, 2011 and was adjourned to July 28, 2011 and then again to September 23, 2011 for continuation. An agent for the landlord company attended all hearings and called witnesses. The tenant attended on July 26 and July 28, 2011, however the tenant did not attend on September 23, 2011. The parties both provided evidence in advance of the hearings, and the parties and witnesses each gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witnesses on the evidence provided. All evidence and testimony has been reviewed and is considered in this Decision.

During the course of the September 23, 2011 hearing, the landlord's agent advised that a portion of the dispute has been settled, and accordingly the landlord withdraws the applications for an Order of Possession and for an order permitting the landlord to keep all or part of the security deposit in partial satisfaction of the landlord's claim.

Issue(s) to be Decided

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

Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

Background and Evidence

The parties agree that this fixed-term tenancy began on November 15, 2010 and expires on November 14, 2011; the tenant still resides in the rental unit. Rent in the amount of \$1,008.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$550.00.

The parties further agree that a hearing was conducted by a Dispute Resolution Officer on March 31, 2011 which resulted in an Order dated April 1, 2011 that the landlord pay to the tenant \$900.00 for the loss of use and enjoyment of the rental unit for the months of January through March, 2011, which may be satisfied by withholding rent from a subsequent month's rent payable. The Decision also stated that the landlord must hire a licensed, professional pest control company no later than April 15, 2011 to remedy the rodent infestation in the tenant's rental unit, and further, that the tenants be authorized to reduce future monthly rent by \$300.00 until such time that the pest control company has completed the extermination process and verified that the rental unit is free from rodents.

The landlord's agent testified that in February, 2011 the landlord had a maintenance person attend the rental unit who covered all holes that might let in a rodent with wire mesh and sprayed foam on top of the mesh so that it would harden in place preventing rodents from chewing through. Prior to that, the tenant had asked for traps which were provided to the tenant by the landlord.

The pest control company was hired on April 13, 2011 and bait stations were placed. The pest control technician provided the tenant with a business card and told the tenant that if any pests were caught to contact the pest company immediately and someone would attend right away. No rats were ever given to the pest control company and the tenant did not call the pest control company. The landlord's agent also testified that the pest control officer, the maintenance person and the Dispute Resolution Officer had all told the tenant he would have to prove rats still remained in the rental unit before deductions from rent would be allowed.

The tenant put a stop-payment on an authorized debit from the tenant's bank account and gave the landlord a cheque in the amount of \$710.00 for June, 2011. The tenant also paid \$710.00 for the month of July, 2011. The landlord claims the \$300.00 from the tenant for those months in addition to a \$25.00 late fee for each of those months, which is provided for in the tenancy agreement. A copy of the tenancy agreement was provided in advance of the hearing.

The landlord's witness was a supervisor of the technician from the pest control company. The witness read a statement from the technician that attended the rental

unit, which the witness believes is an accurate record of the events that took place. The statement states that the tenant had collected a dead rodent and placed it in a trap to get out of paying rent. The tenant told the maintenance person that he saw rodents in the bait stations, but that would not be possible because only authorized people can open the bait stations and that they are secured with a lock and key. Further, rodents leave the bait station and die within 1 to 3 days. The statement also states that no calls were made to the technician or the pest control company, and the GPS would prove that no technician attended at the request of the tenant.

The report also states that the tenant showed the technician multiple photos and a video of droppings and a rodent in a trap. The technician believed all images to be the same rodent. Further, old droppings were in the suite and were proven to be mice droppings covered in dust. The technician spoke with the maintenance person who advised that the tenant had told the maintenance person that the tenant had called the technician. The technician felt that the tenant had lied.

The tenant testified that he expected a certificate from the pest control company once the rodents were fully eradicated. Also, a maintenance person of the landlord attended the rental unit on July 7, 2011 to remove covers from the heaters so the technician could see if there were any entry areas but the covers were not removed at all and the technician put a small mirror in the area instead. The same day, the tenant found a rat in the fridge and another was found in the bathroom. They did not arrive to get the rat.

The tenant feels that rent is fully paid as a result of having no final inspection by the pest control company.

The tenant also testified that the rent payments were accompanied with a letter each month stating why the tenant deducted \$300.00 for each of the months for rent, and therefore, the tenant ought not to be charged any NSF fee, but the tenant did not provide a copy of any of those letters.

Analysis

In the circumstances, I find that the tenant has not fully cooperated with the pest control company by failing to call when rodents were located. I accept the evidence of the technician's supervisor and the statement of the technician that no calls were received. The *Residential Tenancy Act* requires that any party claiming a monetary order from another party must do whatever is reasonable to mitigate or reduce any damages suffered. I find that the tenant has not taken appropriate steps to mitigate any damages suffered by failing to call the technician immediately after if a rodent was located, which the tenant was instructed to do on more than one occasion from the technician. I further

accept that the rodent issue has been resolved, and was so resolved in May, 2011. Therefore, I find that the tenant was not entitled to withhold any rent for the months of June or July, 2011, and the landlord is entitled to a monetary order.

The landlord claims \$300.00 for each of June and July, however, the rent amount is \$1008.00 per month, and I have evidence that the tenant paid \$710.00 for each of those months, a difference of \$298.00 per month.

The tenant did not provide any evidence that letters were given to the landlord stating why the rent payments were lower than the rental amount. Also, the tenancy agreement states that a late fee in the amount of \$25.00 will be applied to all accounts in arrears, and therefore the landlord is entitled to \$50.00 in late fees.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

The landlord's application for an order permitting the landlord to keep the security deposit is hereby dismissed as withdrawn.

The landlord's application for a monetary order for unpaid rent and late fees is hereby allowed at \$646.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The tenant's application for an order cancelling the notice to end tenancy is hereby allowed.

Since both parties have been partially successful with their applications, I decline to order that either party recover the filing fee from the other party for the cost of these applications.

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: September 30, 2011.

Residential Tenancy Branch