



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, MNDC, RR, FF

For the landlord – OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to both the tenants and landlords applications for Dispute Resolution. The tenant seeks to cancel the Notice to End Tenancy and seeks a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; an Order to reduce the tenants rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application. The landlord seeks an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the first conference call hearing. That hearing was adjourned as the landlords evidence package had not been received by the Dispute Resolution Officer. At the reconvened hearing held today only the tenant and his witness appeared. The line was monitored for 10 minutes to give the landlord opportunity to dial into the conference call. The landlord failed to dial into the call and the hearing proceeded in the landlord's absence. Consequently, the landlord's application is dismissed without leave to reapply.

The tenant and his witness gave sworn testimony and were given the opportunity to present their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the tenant has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the 10 Day Notice to End Tenancy for unpaid rent cancelled?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to reduce the rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This tenancy started on October 01, 2011. Rent for this unit is \$3,600.00 per month and is due on the first day of each month in advance. This is a fixed term tenancy which is due to expire on June 30, 2012.

The tenant testifies that this unit was advertised as a fully furnished rental unit. The tenant states he came to view the unit on September 13, 2011 with the landlord's agent and found the unit had no furniture or any other accessories as described. The tenant testifies the landlords agent told him the furniture was in storage and the unit would be furnished prior to the tenants moving in date. The tenant testifies the landlord's agent discussed with him the type of furnishings and accessories which would be available in the unit by his move in date.

Te tenant testifies that he paid the security deposit and signed the tenancy agreement with a move in date of October 01, 2011. On this date the tenant and his family arrived at the rental unit and found it was not fully furnished as described. There was a queen size bed and headboard missing, four chests of drawers missing, a television and all linens, accessories and some kitchen equipment missing. The landlord's agent also promised two new sofas. The tenant testifies he reached an agreement with the landlords agent that the tenant would keep the first month's rent to purchase linens, accessories and the missing

kitchen equipment and the tenant gave the landlord post-dated cheques starting from November 01, 2011 until the tenancy was to expire.

The tenant testifies he went to Wal-Mart and purchased all the missing items for around \$1,800.00. The tenant states he gave the landlord's agent the receipts for these amounts and has provided copies of them in evidence. The tenant states he gave the landlord a cheque for the balance of rent of \$1,800.00 on October 06, 2011

The tenant testifies the queen sized bed arrived on October 02, 2011 and the television and two sofas arrived on October 21, 2011. The tenant testifies the landlord's agent informed the tenant that the landlord would purchase the chest of drawers and headboard.

The tenant testifies that on October 07, 2011 the landlord's agent informs the tenant that the landlord will not be providing any further furniture. On October 08, 2011 the tenant states he gave the landlord a letter outlining the chain of events (copy provided in evidence.)

The tenant testifies that on October 11, 2011 the landlord's agent informs the tenant that he must repay the amount to the landlord that he withheld from his rent for the purchase of items from Wal-Mart. The tenant states there was no further explanation for this breach of their agreement. The tenant testifies he then faxed the copy of the letter to the landlord's agent and he put a stop on the rent cheque paid for October of \$1,800.00. The tenant testifies that on October 12, 2011 the landlord's agent posted a 10 Day Notice to End Tenancy on his door. The tenant states after seeking advice he then sent the landlord another cheque for \$3,600.00 on October 15, 2011. This cheque was received on October 16, 2011 and the tenant has provided registered mail tracking information in evidence. The tenant states he filled his application to cancel the Notice on October 19, 2011.

The tenant seeks to recover the sum paid for household items which should have been included in the inventory for the house. The tenant is claiming the sum of \$1,800.00 for these items. The tenant also seeks compensation from the landlord for not providing the house fully furnished as described in the advertisement and as described by the landlord's agent. The tenant seeks compensation because the landlord's agent went back on their

agreement for the tenant to use the first month's rent to purchase the missing items. The tenant seeks compensation for the loss of the use of four chests of drawers and a head board and for the delay in providing the television and two sofas. The tenant seeks a total amount in compensation of \$2,200.00.

The tenant also seeks to cancel the 10 Day Notice to End Tenancy as the rent was paid in full within the five allowable days since the Notice was deemed to have been served. The tenant also seeks a rent reduction of \$600.00 per month until such a time that the landlord does provide the four chest of drawers and the queen sized head board.

The tenant's witness testifies that he was party to the conversation between the tenant and the landlord's agent on September 13, 2011. The witness states at the viewing the house was empty and the landlord's agent told the tenant that the furniture had been stored and the house would be provided fully furnished. The witness testifies that in this area of British Columbia, houses that are fully furnished come fully equipped with all kitchen equipment and linens and a television in each bedroom. The witness testifies that the landlord's agent was aware the tenant and his family would be arriving with just their clothes in suitcases and would require everything to be provided in the house.

The tenant testifies that at the move in inspection there were areas identified as deficiencies that would be remedied by the landlord. This includes the filling of the propane tank for heating (it was agreed the tenant would ensure this was refuelled at the end of his tenancy), the fire place was to be serviced, one garage door would not open and one panel in the door was rotten; there is also a minor leak in a pipe under the sink. The tenant testifies the landlord has not remedied these deficiencies. Since moving into the unit the tenant has also noted other deficiencies. The lights and outlets at the front of the house including the Christmas lights are all on one circuit. This circuit regularly blows and the tenant cannot gain access to the panel to reset the circuit as it is located in the basement unit. The tenant states he notified the maintenance man for the landlord over 40 days ago about this problem but to date this has not been rectified.

Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the reconvened hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and the affirmed testimony before me.

With regard to the tenants claim for \$1,800.00 for items purchased for the property by agreement of the landlords agent. I have considered the tenants testimony and evidence in this matter and find his evidence to be straightforward and credible that he did have an agreement with the landlord's agent to purchase these items for the house as they were not in place at the start of his tenancy as agreed. However, the tenant is claiming \$1,800.00, I have calculated the amount paid for these household items from the receipts provided by the tenant and find the amounts total \$1,774.56 not \$1,800.00 as claimed. Therefore I limit the tenants claim to the amount shown on the receipts and find the tenant is entitled to a Monetary Order to recover the sum of **\$1,774.56**. I caution the tenant however that all of these items must be left in the property when the tenancy ends.

With regard to the tenants claim for a Monetary Order for compensation for damage or loss; the tenant seeks compensation of \$2,200.00 for their reduced comfort in the rental unit due to the missing television and two sofas for 21 days and for the continued missing chests of drawers and headboard. When looking at a claim of this nature I have taken into account the inconvenience to the tenant and his family for the lack of these items and the reduced enjoyment they incurred of the rental unit due to the lack of these items. With regard to the sofas as the tenant had older sofas in place while waiting for the new ones I would not consider that a great hardship was placed upon the family. The lack of the television would have placed some inconvenience and lack of pleasure in the rental home for 21 days and the lack of the headboard and chest of drawers would also constitute an inconvenience. I find however that the tenants claim to be excessive for the lack of these items and I have limited the tenants claim in compensation to **\$800.00** being a sum more proportionate to the inconvenience suffered.

With regard to the tenants claim to reduce the rent by \$600.00 per month until the landlord provides a headboard and four chests of drawers; While the tenant has not provided any

documentary evidence to show that the landlord did intend to rent this unit with these items contained within it. It would be reasonable for the tenant to expect these items when he rented a fully furnished house and I find the tenants and his witnesses testimony that the landlords agent promised the tenant that these items would be in place from the start of his tenancy to be credible. However, I find the amount requested of a rent reduction of \$600.00 per month to be excessive and I have placed a limit on the tenant's claim of \$200.00 per month until such a time as the landlord provides the queen head board and four chests of drawers.

The tenant requests that I consider his claim for repairs to the rental unit. In the absence of a formal and proper application for that issue, I decline to determine that issue, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this process. The tenant also agrees that the time of the hearing he had not requested these repairs to be completed in writing to the landlord. The tenant is at liberty to file a new application to deal with repair issues.

With regard to the tenants claim to cancel the 10 Day Notice to End Tenancy; When a 10 Day Notice has been served to a tenant, the tenant has five days to pay the rent from the date the Notice is deemed to have been served. In this case the Notice was served by posting it to the tenant's door on October 11, 2011. This Notice is therefore deemed to have been served three days later on October 14, 2011. The tenant paid his rent by cheque to the landlord on October 15, 2011 and this was received by the landlord on October 16, 2011. Consequently in paying this rent within the five days it effectively cancels the 10 Day Notice to End Tenancy. Therefore, this section of the tenants claim is upheld and the Notice to End Tenancy is set aside.

As the tenant has been partially successful with his claim I find the tenant is entitled to recover the **\$50.00** filing fee paid for this application from the landlord. The tenant has been issued with a Monetary Order pursuant to s. 67 and 72(1) for the following amount:

Amounts paid for household items	\$1,774.56
Compensation for items not provided	\$800.00

Filling fee	\$50.00
Total amount due to the tenant	\$2,624.56

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent dated October 11, 2011 is cancelled and the tenancy will continue.

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,624.56**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the tenant to reduce his rent by **\$200.00** per month until such a time as the landlord provides a queen size headboard and four chests of drawers.

The tenant is at liberty to file an application regarding repairs.

The landlord's application is dismissed in its entirety without leave to reapply.

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: November 28, 2011.

Residential Tenancy Branch