



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI CNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for unpaid rent, to dispute an additional rent increase, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant been issued and served a valid 2 Month Notice to end tenancy pursuant to sections 49 and 52 of the *Residential Tenancy Act*?
2. Has the Tenant been issued and served a valid 10 Day Notice to end tenancy pursuant to sections 46 and 52 of the *Residential Tenancy Act*?
3. Does the tenancy agreement include payment for services and repairs to the rental unit?

Background and Evidence

The parties agreed they entered into a verbal tenancy agreement that began on August 1, 2010.

The Tenant affirmed that the tenancy agreement was based on \$2,000.00 monthly rent payable on the second of each month for the house plus \$900.00 per month if the pasture was rented. He stated he submitted late evidence which is proof he paid \$1,450.00 as the combined security and pet deposit on May 31, 2010.

The Tenant referenced his rent receipts and confirmed that for August 1, 2010, he paid \$2,100.00 and that for the period of September 2010 to September 2011 he paid rent for the house and the pasture. He stopped paying rent on the pasture as of October 2, 2011. He further clarified that he paid zero dollars for rent for October and November 2011 as these months were credited for work he had performed and for December 2011 he paid only \$1, 500.00, a reduced rent for the house due to work he had performed. He paid \$2,000.00 rent for January 2012 and February 2012.

The Tenant confirmed he is vacating the property as of March 31, 2012 and that his rent for March 2012 is to be paid from his compensation for receiving the 2 Month Notice.

The Landlord's Agent confirmed service of both the 2 Month Notice which was placed in the Tenant's mail box on February 24, 2012, and the 10 Day Notice which was placed in the mailbox on March 5, 2012.

The Landlord affirmed that their agreements were always verbal and stated that this was an expensive lesson for him to learn. He confirmed the rental payments as discussed by the Tenant, as noted above however, his version of their agreement differs from the Tenant's version. He stated he understood that without having a written contract that it has cost him a lot. He confirmed the Tenant was allowed to do work on the flooring and that he attended this hearing to regain possession of the property.

A conversation took place whereby I informed the Tenant his application for the return of his security deposit was premature as the tenancy will not end until March 31, 2012. Both parties were encouraged to seek information pertaining to section 38 of the Act and to contact the *Residential Tenancy Branch* if they had any questions about their rights or obligations from this point onward.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, copies of receipts for materials purchased by the Tenant, copies of rent payment receipts, a copy of the 2 Month Notice and 10 Day Notice, photographs, and written statements from both parties.

Section 1 of the Act provides that a “**tenancy agreement**” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

I favor the evidence of the Tenant, who stated their rent was \$2,000.00 per month for rental of the house plus \$900.00 per month if they were renting the pasture, over the evidence of the Landlord who stated the rent was \$2,900.00 for the entire property, regardless if the pasture was used. I favored the evidence of the Tenant over the Landlord, in part, because the Tenant's evidence was forthright, credible, and was supported by rent receipts. The Tenant readily acknowledged that they stopped paying for the pasture, without providing written notice to the Landlord of their desire to cancel their agreement for the pasture. In my view the Tenant's willingness to admit fault when they could easily have stated they did provide the Landlord notice of their decision to stop renting the pasture, lends credibility to all of their evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Landlord's explanation of why he did not make an effort to collect the unpaid rent to be improbable. Given that the Landlord later provided testimony that he had agreed to allow the Tenant to do some construction and /or maintenance on the property. I find that the Landlord's explanation to why he took no action when the Tenant paid no rent for October and November 2011 to be improbable, not to mention does not meet the requirement under section 7 of the Act for mitigation. Rather, I find the Tenant's explanation that the parties had entered into agreements for reduced rent in exchange for his labour and materials and that he would vacate the property by March 31, 2012, to be plausible given the circumstances presented to me during the hearing.

Based on the aforementioned, I find that on a balance of probabilities, the parties entered into a verbal month to month tenancy agreement that began on August 1, 2010. Rent was payable on the 2nd of each month in the amount of \$2,000.00 for the house and \$900.00 per month if the pasture was used and that the Tenant paid a combined security and pet deposit of \$1,450.00 on May 31, 2010. I further find that the matters relating to work performed by the Tenant in exchange for rent have been fully satisfied

as the evidence supports the Tenant started to pay the monthly rent for the house again, as of January 2012.

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51 (1.1) stipulates that a tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

The evidence supports the Tenant is vacating the property as of March 31, 2012 and they wish to have the March 2012 rent considered paid pursuant to section 51 (1.1) of the Act, as listed above. Accordingly I find the 10 Day Notice to be invalid, and it is hereby cancelled.

I find there to be insufficient evidence to support the Tenant's request to dispute an additional rent increase; therefore this request is dismissed. Furthermore, I find the remaining matters pertaining to the Tenant's claim for monetary compensation relate to a contract for services that is not significantly link to the tenancy agreement and are therefore dismissed for want of jurisdiction.

The Tenant has primarily been unsuccessful with his application; therefore I find he must bear the burden of paying to bring this application forward.

Conclusion

The 10 Day Notice to End Tenancy dated March 2, 2012 is hereby cancelled and is of no force or effect.

The Landlord's decision will be accompanied by an Order of Possession effective March 31, 2012. This Order is legally binding and must be served upon the Tenant.

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: March 23, 2012.

Residential Tenancy Branch