



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a 10 day Notice to End Tenancy for unpaid rent, to obtain a monetary order for alleged loss or compensation under the Act, for an order for the Landlord to comply with the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have review all evidence submitted that complied with the rules of procedure. However, only the relevant evidence and issues are fully described in this decision.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Is the Tenant entitled to the other relief sought in the Application?

Background and Evidence

This dispute involved two different rental units.

On or about September 23, 2011, the Tenant and the Landlord entered into a one month fixed term tenancy agreement for rental unit 1606, to end on October 22, 2011, with rent of \$2,300.00 per month, payable on the 23rd day of the month.

On or about October 19, 2011, the Tenant and the Landlord entered into a three month fixed term agreement for unit 303, with it reverting to a month to month tenancy after the initial three month term. According to the tenancy agreement, the rent for unit 303 is \$1,700.00 per month, with cable included in the rent, payable on the 23rd day of the month.

The Landlord explained that 303 and 1606 were the same size of rental unit, however, unit 1606 was on the top floor of the building and had excellent views of the marina and other features surrounding the property, while unit 303 was close to the ground floor without the scenic views.

The Landlord testified that there was a water leak in unit 303 and the Tenant was unable to move into unit 303. The Landlord also testified that prior to the water leak, the Tenant had asked him for an extension to stay on in unit 1606, after the initial one month period had ended.

The Landlord wanted the Tenant to pay the rent of \$2,300.00 per month for unit 1606 and the Tenant disputed this. The Tenant believed he should be able to stay in rental unit 1606 and pay the rent of \$1,700.00, which he would have paid in unit 303.

The business relationship of the parties began to deteriorate as the dispute carried on. The Tenant refused to pay the rent for 1606 of \$2,300.00, but paid \$1,700.00, and stayed in this unit.

In March of 2012, the Landlord cut off the cable to rental unit 1606 which also cut off the Internet access of the Tenant. The Tenant argues that the Internet is essential to the tenancy as that is how he communicates with his family overseas. The Tenant paid the cable bill of \$221.00 to have the cable reconnected.

When he went to pay the rent for April 23, 2012, the Tenant had deducted \$221.00 from the \$1,700.00, and offered the Landlord a cheque for the balance of \$1,479.00. The Landlord refused to accept the cheque for \$1,479.00. The Landlord issued the Tenant a 10 day Notice to End Tenancy on April 25, 2012, by posting on the door.

The Tenant submits that his spouse suffered pain, anxiety and stress due to the ongoing dispute with the Landlord. The Tenant requests a monetary order of \$4,400.00 for the pain, suffering and stress. The Tenant's spouse testified she went to several doctors and specialists about this pain, suffering and anxiety.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the 10 day Notice to End Tenancy is valid and should not be cancelled. By his own admission the Tenant failed to pay all the rent due to the Landlord because the Tenant wanted to deduct money for Internet from the rent due.

Under section 26 of the Act, the Tenant was not able to withhold a portion of the rent, even if the Landlord was in breach of the Act or the tenancy agreement, unless the Tenant had some right under the Act not to pay all the rent due. For example, under section 33 of the Act the Tenant might have withheld rent for making emergency repairs to the rental unit for plumbing problems. Internet access or cable services are not considered an emergency repair under the Act. Therefore, the Tenant was unable to deduct this from rent without an order from a Dispute Resolution Officer allowing him to do so. The Tenant had no such order and therefore, I dismiss the Application.

Following my dismissal of the Tenant's Application, the Landlord requested an order of possession. Under section 55 of the Act, I must grant that request and I issue the Landlord an order of possession effective **at 1:00 p.m. on May 31, 2012**. This order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

I dismiss all of the other claims by the Tenant, as there is insufficient evidence such as a medical report or medical opinion letter from a doctor confirming the Tenant's spouse suffered stress or anxiety due to the Landlord's actions.

I note it is most likely both parties contributed to their own stress in this dispute, as they should have made application to the branch several months ago to try and resolve this dispute before it escalated to this point. Unfortunately, they did not and the tenancy must now end.

Conclusion

The Tenant withheld rent without authority to do so under the Act. The Notice to End Tenancy is not cancelled, the Application is dismissed, and the Landlord has an order of possession effective at 1:00 p.m. on May 31, 2012.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: May 22, 2012.

Residential Tenancy Branch