



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OPR MND MNR MNSD FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied to cancel a notice to end tenancy for unpaid rent. The landlord applied for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant, a witness for the tenant and the landlord participated in the teleconference hearing.

Preliminary Issues

Tenant's Application

The tenant did not submit a copy of the notice to end tenancy as evidence in his application. It is the responsibility of the applicant to provide sufficient evidence to support their application. In this case, the tenant applied to cancel a notice to end tenancy but did not provide a copy of the notice which he sought to cancel. I therefore determined that the tenant did not provide sufficient evidence to support his application, and I dismissed the application.

In the hearing, the landlord orally requested an order of possession. Section 55 of the Act states that when a tenant applies to cancel a notice to end tenancy and the application is dismissed, if the landlord orally requests an order of possession in the hearing then the order of possession must be granted. In the hearing, the landlord appeared and orally requested an order of possession. Accordingly, I grant the landlord an order of possession.

Landlord's Application

The landlord was granted an order of possession resulting from the dismissal of the tenant's application and the landlord's oral request for an order of possession. I therefore did not need to consider the portion of the landlord's application regarding an order of possession.

The landlord submitted documentary evidence to the Branch that was received on the date of the hearing. The tenant stated that he did not receive a copy of this evidence. I therefore did not admit the landlord's documentary evidence.

I have reviewed all testimony and other admissible evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on July 15, 2011. Rent in the amount of \$550 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$275.

Landlord's Claim

The landlord served the tenant a notice to end tenancy for cause on March 20, 2012. The tenant failed to pay rent for April 2012, and on April 20, 2012, the landlord served the tenant a notice to end tenancy for unpaid rent. The tenant then gave the landlord a cheque for May 2012 rent, but the cheque was post-dated for May 30, 2012. The landlord has claimed \$1100 in unpaid rent for April and May 2012. The landlord acknowledged that the tenant usually paid the rent in cash, and the landlord did not issue receipts.

The landlord also claimed \$300 for the insurance deductible for damage done to his vehicle by the tenant. On February 9, 2012 the tenant complained that the landlord's truck blocked the tenant's walkway, and then the tenant threw two rocks that hit the left side of the landlord's truck. The landlord called the police and reported this incident.

Tenant's Response

The tenant paid the April rent in cash on April 1, 2012. The landlord did not give the tenant a receipt. The tenant paid May rent by cheque on May 1, 2012. The cheque was dated May 1, 2012. The tenant's son appeared as a witness and stated that he was present on April 30, 2012, when his father paid the May 2012 rent by cheque. The tenant's son could not recall the date on the cheque.

In regard to the landlord's claim for damage to his vehicle, the tenant's response was that the police came to talk to the tenant and they did not find out anything.

Analysis

I find that the landlord is entitled to the amounts claimed for unpaid rent for April and May 2012. I find it more likely than not that after the tenant was served with a notice to end tenancy for cause on March 20, 2012, the tenant did not pay rent for April 2012. The landlord served the tenant a notice to end tenancy for unpaid rent, and the tenant then filed an application to cancel the notice to end tenancy for unpaid rent. The tenant did not provide any evidence, such as bank withdrawal statements, to demonstrate that he did pay the rent for April 2012.

In regard to May 2012 rent, both the landlord and the tenant stated that the tenant gave the landlord a cheque, but the landlord stated that the cheque was dated May 30, 2012, and he therefore could not cash the cheque. I find it more likely than not that if the tenant gave the landlord a cheque for rent that was dated May 1, 2012, the landlord would have cashed the cheque. The tenant's son could not confirm the date written on the cheque, and the tenant and his son provided contradictory evidence regarding the date that the tenant gave the landlord the cheque. If the tenant gave the landlord the cheque on April 30, 2012, he may have inadvertently dated the cheque for May 30, 2012, rather than April 30, 2012.

I find that the landlord is not entitled to the amount claimed for his \$300 insurance deductible, as damage by a tenant to a landlord's personal property that is not part of the rental agreement is not compensable under the *Residential Tenancy Act*.

As the landlord's monetary application was mostly successful, I find he is entitled to recovery of his \$50 filing fee for the cost of his application.

Conclusion

The tenant's application is dismissed.

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord is entitled to \$1150. I order that the landlord retain the security deposit of \$275 in partial satisfaction of the claim and I grant the landlord an order under section

67 for the balance due of \$875. This order may be filed 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: May 10, 2012.

Residential Tenancy Branch