



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNR, OPR, MNSD, CNR, ERP, MNR, OLC, RP

Introduction

This hearing dealt with a cross applications. The landlord is seeking an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants are seeking to have a 10 Day Notice for Unpaid Rent or Utilities set aside, seeking a monetary order, to have an order to have emergency repairs conducted, and an order to have the landlord comply with the Act. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is either party entitled to any of the above under the Act, the regulations or the tenancy agreement?

Background and Evidence

The tenancy began on or about Sept 1, 2006. Rent in the amount of \$1500.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$750.00. The tenant and landlord agreed to a new rate of \$800.00 as of January 1, 2012.

The landlord gave the following testimony; the tenant failed to pay \$350.00 rent in the month(s) of May and on May 8, 2012 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of June 2012. The landlord is seeking the recovery of the lost rent and \$4360.16 to cover the costs of paying the city by-law fines for having a “grow op” on the property.

The tenant gave the following testimony; acknowledges that \$1150.00 of unpaid rent is outstanding, withheld the rent as the landlord refuses to make the house habitable, adamantly denies any involvement of a “grow op”, has not been charged or been investigated “whatsoever”, is willing to move out if given several months to organize themselves and gets some funds in place.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I address the tenant’s application as follows;

The tenant is seeking to have the landlord conduct emergency repairs and have him comply with the Act. The tenant did not provide any documentary evidence of any sub standard living conditions. The landlord disputes the condition of the unit as stated by the tenant. The tenant was also seeking a monetary order for work done on the property however the landlord denies any such agreement was made. Both parties sent in a **copy** of a receipt. They both dispute the authenticity of the others. As neither party provided an original receipt I do not find either receipt to be sufficient for either party to rely on. The tenant has not satisfied me of their claim and I therefore dismiss this portion of their application.

The tenant is also applied to have the Notice set aside. Although the tenants had every intention of paying the rent, they did not. In their own testimony they confirmed the landlord’s claim of unpaid rent and as such they have not been successful in setting aside the Notice. The Notice remains in full effect and force.

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

I address the landlord's application as follows;

The landlord is seeking the recovery of costs imposed by the local municipality for electrical infractions on the subject property. The landlord testified that it was due to a "grow op" being conducted. The landlord did not provide any evidence that the subject tenant's were responsible for this. The tenant's adamantly deny any involvement. The landlord has not provided sufficient evidence to support his claim and I therefore dismiss this portion of his application.

I accept the landlord's testimony and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice. Based on the above facts I find that the landlord is entitled to an order of possession. 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.

As for the monetary order, I find that the landlord has established a claim for \$1150.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$750.00 deposit and the \$25.59 in interest which has accrued to the date of this judgment in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$324.41. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$324.41. The landlord may retain the security deposit.

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: June 07, 2012.

Residential Tenancy Branch