



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant-CNR, RR, MNDC, FF
 For the landlord-OPR, MNR, FF

Introduction

This hearing dealt with cross applications filed by both parties seeking remedy under the *Residential Tenancy Act*.

The tenant is seeking to cancel a notice to end the tenancy (the "Notice"), for an order allowing a reduction in rent, a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The landlord is seeking an order of possession, a monetary order for unpaid rent, and to recover the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me.

The tenant was the only party submitting evidence. No issues were raised concerning service of the evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Preliminary Issue-The landlord attended the hearing; however he exited the telephone conference call hearing prior to its conclusion and did not return.

Issue(s) to be Decided

Is the tenant entitled to a monetary order, an order allowing a reduction in rent, an order cancelling a notice to end the tenancy and to recover the filing fee?

Is the landlord entitled to an order of possession, a monetary order and to recover the filing fee?

Background and Evidence

There is no written tenancy agreement. The landlord testified that the tenancy began in 2003, monthly rent was \$300.00 and there was no security deposit collected by the landlord.

The tenant testified that he started a tenancy with the landlord in 2003, moved out and moved back into the rental unit in 2009. The tenant stated that monthly rent was \$500.00. The tenant stated that the landlord had three strict rules: that rent is paid in cash, no receipts were to be issued and there was to be no written tenancy agreement.

Tenant's application and testimony:

The tenant has claimed \$7500.00. In support the tenant stated that the landlord pleaded with the tenant to move back into the rental unit in 2009, in a multi-unit building. As an inducement, the landlord promised the tenant that he would make the necessary repairs within 6 months and have the occupancy permits from the city within 9 months.

The tenant stated that the landlord had not done any repairs and that the rental unit has fallen into a mostly uninhabitable state. Additionally, the landlord has failed to obtain the occupancy permits.

The tenant stated that since 2010, the deteriorated condition of the rental unit, such as the soggy floor due to continuing water damage, has caused the tenant a loss of use of at least 50% of the floor space.

The tenant stated that the landlord's solution was to keep a sheet of plastic over the floors "sealing" them from collapsing. Additionally the collapsed floor area was covered with plywood, plastic and newspaper.

The tenant stated that the condition of the rental unit has caused medical problems, such as serious chronic infections and a recurrence of a chronic leg infection.

The tenant stated he was in the midst of a challenging year at college and was unable to make a change in location, especially as he had a dog.

The tenant's monetary claim is based upon reimbursement of 50% rent (monthly rent of \$500.00 per month) for the last 24 months, for a total of \$6000.00. The remaining \$1500.00 is reimbursement of three months' rent the tenant paid the landlord in advance due to the landlord's promise to use the money for repairs, which have not been made. The three months are June, July and August 2012.

The tenant further stated he is entitled to an order allowing a reduction in rent due to the extremely squalid state of the rental unit.

As to the request to cancel a Notice to End Tenancy, the tenant submitted that he had only been given a verbal request from the landlord to leave the rental unit.

Landlord's application and testimony-

The landlord produced no evidence in support of his application and could not answer the most basic question concerning a Notice to End Tenancy.

When questioned, the landlord stated that he does give rent receipts to "all who ask." According to the landlord, the tenant did not ask for receipts.

As to the monthly rental obligation, the landlord agreed that he could not produce proof of the payment, except to say as to the amount, "that it was fair."

When questioned, the landlord agreed that the rental unit could use some repairs, but that the damage was committed by the tenant's marijuana growing operation from 2003-2005.

The landlord stated that he did not fix the rental unit because the tenant denied access. When questioned, the landlord stated that the last time he was in the rental unit was last winter.

As to his request for a monetary order for \$390.00, the landlord submitted that the tenant failed to pay rent.

I note that the landlord was hesitant in responding to most questions and became more argumentative during the course of the hearing.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The parties were unable agree as to the terms of the tenancy agreement, most important, the amount of monthly rent. In dealing with the agreed upon terms and services in a tenancy agreement, the onus is on the landlord to prove the terms agreed upon at the commencement of the tenancy through a written tenancy agreement. The landlord did not prepare a written tenancy agreement which stated the amount of monthly rent.

The landlord is also required under the Act to issue receipts for cash rent payments, which he confirmed that he did not.

Without that proof and in light of the landlord's failure to complete the hearing to provide further testimony, I accept the evidence of the tenant, who I found to be credible. I find that upon a balance of probabilities the monthly rent was \$500.00.

Tenant's application:

Cancel a notice to end the tenancy-The notice issued to the tenant was a verbal notice, which does not conform to the requirements of the Act as to form and content. I therefore find that it is not necessary to cancel the verbal notice as such notice is invalid.

The parties are notified that the tenancy will not end pursuant to the landlord's verbal notice and the tenancy continues until it may otherwise end under the Act.

\$6000.00 for loss of use-The Act requires a landlord to provide and maintain a rental unit which complies with health, safety and housing standards and make it suitable for occupation. I find the landlord has not taken sufficient action necessary to remedy the damaged floor and water damage and I find this insufficient response has caused the tenant to suffer a loss of use and enjoyment of his rental unit. In reaching this conclusion, the landlord has fully acknowledged that the rental unit has needed repairs since 2005 and that he has not done so as he claims the tenant is at fault.

I do not accept that the tenant damaged the rental unit and I accept the tenant's evidence that he has lost the use of at least 50% of his flooring space.

I therefore find the landlord has breached section 32 of the Act and I order the landlord to do the following in the rental unit:

1. Immediately repair or replace the damaged flooring in the rental unit.

I find the tenant has requested these repairs since at least 2009 and that the landlord has failed to act in a timely manner to address these repairs, despite the ongoing requests of the tenant. I find there has been an ongoing breach by the landlord, and that such breach has caused the tenant a diminished value of the tenancy and loss of use and enjoyment of portions of the rental unit for the requested prior 24 months. I find that tenant's request of a loss of use of at least 50% of usable flooring space in the amount of \$250.00 per month to be reasonable. I order the landlord to compensate the tenant in the amount of \$250.00 per month retroactively for 24 months, in the amount of **\$6000.00**. This amount may also be deducted from the reduced rate of rent as described below.

I also order that the monthly rent be reduced to **\$250.00**, effective immediately, until such time as the landlord completes all the above ordered repairs, files and pays for an Application for Dispute Resolution, proves the above work has been completed in a good and workmanlike manner, and receives an order from a Dispute Resolution Officer that the rent may return to \$500.00 per month.

\$1500.00 for reimbursement of advanced rent-I accept that the tenant paid \$1500.00 for rent for June, July and August 2012, so that the landlord would make the repairs.

However, the tenant still occupies the rental unit and therefore is obligated to pay monthly rent.

The tenant's application was filed on June 12, 2012, and therefore his request for compensation for June's rent has been dealt with as referenced above, a retroactive rent reduction. I therefore considered only the request as it pertained to \$500.00 for July and August each.

As I have found that the tenant's monthly rent is now \$250.00 beginning immediately, I find the tenant overpaid advanced monthly rent for July and August and is entitled to a credit of \$250.00 each for those months, or \$500.00.

Filing fee-I find the tenant's application had merit and I award him recovery of the filing fee of \$100.00.

Due to the above, I find the tenant has established a total monetary claim for \$6600.00, comprised of a retroactive rent reduction of \$6000.00, overpayment of rent for July and August in the amount of \$500.00 and recovery of the filing fee of \$100.00.

I allow the tenant to redeem the amount of his monetary claim of \$6600.00 by deducting the amount of the monthly rent obligation of \$250.00, until redeemed in full. Should the landlord receive an order returning the monthly rent obligation to \$500.00, the tenant is authorized to further redeem his monetary claim in the same manner at the increased rate.

In the alternative, I have provided the tenant a monetary order in the amount of \$6600.00.

I direct both parties to keep accurate records of payments made for rent, either through redemption of the monetary claim or direct payments. Should the tenancy end prior to the tenant being able to fully redeem his monetary claim by withholding of his monthly rent payments, the monetary order may be enforceable in the Provincial Court of British Columbia (Small Claims) for the balance due.

I also direct the landlord to issue a receipt to the tenant for each payment of rent, when and if the tenant begins paying rent after redemption of his monetary claim.

Landlord's application-

Order of possession-I have dealt with the landlord's verbal notice to end tenancy in the portion of this Decision pertaining to the tenant's application. I therefore dismiss the landlord's application for an order of possession, as a verbal notice to end a tenancy is non-compliant with the Act.

Monetary order-The landlord provided insufficient evidence to support his request for a monetary order. The landlord provided no documentation or failed to fully participate in the telephone conference call hearing. I therefore dismiss his claim for \$390.00.

Filing fee-As I have dismissed the landlord's application, I dismiss his request for recovery of the filing fee.

Conclusion

The tenant established a monetary claim of \$6600.00, redeemable as outlined previously, and is granted a continuing rent reduction of \$250.00 per month until the landlord has made the required repairs.

The tenant is granted a monetary order for \$6600.00 should he not be able to redeem his monetary claim by withholding monthly rent payments.

The monetary order is enclosed with the tenant's Decision. This order is a **legally binding, final order**, and is enforceable through the Provincial Court of British Columbia (Small Claims).

The landlord's application is dismissed, 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: June 27, 2012.

Residential Tenancy Branch