



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord-MNSD, OPR, MNR, MND, FF
For the tenant-RP, ERP, CNR, CNC, AS, RR, MNDC, MT

Introduction

This hearing dealt with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for an order of possession due to unpaid rent, a monetary order for unpaid rent and damage to the rental unit, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, a 1 Month Notice to End Tenancy for Cause, for an order allowing a reduction in rent, an order requiring the landlord to make repairs and emergency repairs, an order allowing the tenant to assign or sublet the rental unit as the landlord has unreasonably withheld permission to do so, a monetary order for money owed or compensation for damage or loss and for an order granting more time to make an application to cancel a notice to end tenancy.

The parties appeared at the hearing. The hearing process was explained to the parties and they were given an opportunity to ask questions about the hearing process. Thereafter the landlord and the tenant gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and respond each to the other and make submissions to me.

The tenant could not recall if he had served his evidence upon the landlord; the landlord denied receiving any additional evidence from the tenant. I therefore have not considered the evidence of the tenant, due to his failure to comply with the Residential Tenancy Branch Rules of Procedure.

The parties agreed that the landlord served the tenant his evidence and I have therefore accepted the landlord's evidence for consideration in this Decision. Only the evidence relevant to the issues and findings in this matter are described in this Decision.

As a preliminary issue, I have determined that the portion of the tenant's application dealing with a request for orders for the landlord as to making repairs and emergency repairs, granting authority to allow the tenant to sublet or assign the rental unit, an order reducing the monthly rent and a monetary order is unrelated to the primary issue of disputing the Notices.

As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's request for orders and authorizations under the Act, **with leave to reapply**.

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Unpaid Rent and for Cause and on the landlord's application.

Issue(s) to be Decided

1. Is the landlord entitled to an order of possession due to unpaid rent, for a monetary order for unpaid rent and damage to the rental unit, authority to retain the tenant's security deposit and to recover the filing fee?
2. Is the tenant entitled to an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent and the 1 Month Notice to End Tenancy for Cause?
3. Can the tenant be provided with additional time to file an application to dispute the 10 Day Notices to End Tenancy Due to Unpaid Rent and 1 Month Notice to End Tenancy for Cause?

Background and Evidence

Although no written tenancy agreement was entered into evidence, the parties stated that there was one. The landlord stated the tenancy began 5-6 years ago and the tenant stated the tenancy began 6 years ago. The parties agreed that current monthly rent is \$2180.00, payable on the first day of the month.

The landlord stated the tenancy began as a 1 year fixed term and converted to a month to month tenancy thereafter; the tenant said the tenancy began as a 5 year fixed term and was renewed for another 5 year fixed term.

The parties agreed that the tenant paid a security deposit of \$1000.00 at the beginning of the tenancy.

Landlord's application-In addition to seeking an order of possession for the rental unit, the landlord has applied for a monetary order for \$11,000.00, comprised of unpaid rent in the amount of \$6540.00, for April, May and June 2012, unpaid rent of \$2110.00 for February 2011 and \$2350.00 for lawn damage.

The landlord also stated that rent for July had not been paid and that he wished to add the amount of \$2180.00 to his monetary claim.

In support, the landlord stated that he served upon the tenant four 10 Day Notices to End Tenancy for Unpaid Rent, for February 2011, April, May and June 2012, each listing the amount of rent owed for that month.

The landlord stated the Notices were posted on the tenant's door on June 8, 2012, listing an effective end of tenancy date of June 18, 2012. Section 90 of the Act states that documents served in this manner are deemed delivered three days later. Thus the effective move out date is automatically changed to June 21, 2012.

The Notices informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notices also explained the tenant had five days to dispute the Notices.

The landlord stated that since the issuance of the Notices, the tenant has failed to pay rent and owes rent for July.

In further explanation of the Notice for unpaid rent for February 2011, the landlord claimed that the tenant withheld rent as the tenant was to repair the gutter; however the gutter went unrepaired by the tenant.

In response the tenant stated that he had to close the rental unit in March due to the contamination caused by mould and requested the landlord to rid the house of mould. The tenant stated that the mould caused him to have significant health issues, caused him to be hospitalized from April 15 until June 6, 2012 and almost caused the death of his two dogs. The tenant confirmed that he had not paid rent since April 2012, but argued that he was not obligated to pay rent until the landlord fixed the mould problem as the rental unit was not liveable in its current state.

As to the service of the Notices, the tenant stated that he did not receive the Notices until June 18, 2012, as he was staying with his mother after his release from the hospital on June 6. The tenant did not file his application to dispute the Notices until June 27, 2012.

Damage to lawn-The landlord stated that the tenant parked his car on an area of grass, causing the grass to die. The landlord received an estimate of \$250.00 for the repair.

The tenant responded by saying that he had been watering the grass and that at least 70% of the grass had grown back over the spot.

Neglect of yard maintenance-The landlord stated that the tenant failed to properly maintain the yard and that it would be necessary to hire someone to trim the hedges and remove trees. The landlord submitted an estimate of those costs, in the amount of \$2128.00.

In response, the tenant contended that he maintained the lawn and that he was not required to remove or trim the trees.

Analysis

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

As no tenancy agreement was provided into evidence, I accept that the tenancy began 6 years ago, or July 1, 2006, and that the tenancy is a month to month, due to the lack of evidence that the parties entered into a clear fixed term.

As to the tenant's request for more time to make an application to cancel a notice to end tenancy, Section 66(1) of the *Residential Tenancy Act* provides that the Director may extend a time limit established by this *Act* only in exceptional circumstances. In addition, section 66(2) and (3) provide that a time limit established by a 10 day Notice to End Tenancy Due to Unpaid Rent can only be extended to pay overdue rent if the landlord agrees and if the tenant deducted the amount under the belief it was allowed for emergency repairs. The Director must not extend a time limit to make an application for Dispute Resolution if the effective date of the notice has expired.

In the circumstances before me I accept that the tenant withheld his rent for the purpose of compelling the landlord to complete repairs to the rental unit but he did not withhold rent because he believed it was allowed to deduct for emergency repairs as defined by section 33 of the *Act*.

Even if I accept that the tenant received the Notices on June 18, I find that I must deny the tenant's request for additional time to file an application for dispute resolution to dispute the notices to end tenancy because the tenant filed this request after the effective date of the notice. In this case, the notice was effective June 21, 2012 and the tenant filed his application to dispute the Notices on June 27, 2012.

Landlord's Application-

As the tenant did not file his application in dispute of the notices within 5 days, I find the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to an order of possession effective two days after service on the tenant.

The order of possession is enclosed with the landlord's Decision. This order is a legally binding, final order, and may be filed in the Supreme Court of British Columbia should the tenant fail to comply by vacating the rental unit.

As to the monetary issues, in a claim for damage or loss under the *Act* or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

As to the landlord's request to include a claim for unpaid rent for July 2012, I find the tenant was obligated under the tenancy agreement and Act to pay rent for July 2012, and failed to pay. I therefore have allowed the landlord to include a request for unpaid rent for July 2012, in the amount of \$2180.00.

As to the landlord's monetary claim for unpaid rent of \$2180.00 each for April, May, June and July 2012, I find the tenant was obligated to pay rent and failed to pay. I therefore find the landlord has established a monetary claim of \$8720.00.

As to the landlord's claim for unpaid rent for February 2011, I find the landlord failed to act in a timely manner to minimize his alleged loss for the month of February 2011, by filing a 10 Day Notice to End Tenancy for Unpaid Rent within a reasonable time after the breach. I therefore find the landlord did not meet step 4 of his burden of proof and I dismiss the landlord's monetary claim for \$2110.00, without leave to reapply.

As to the landlord's claim for lawn repair and neglect of lawn maintenance, the landlord did not submit proof that he had suffered a loss as a quote is not evidence of payment, which is the first and third step in his burden of proof. Additionally, the Residential Tenancy Branch Policy Guideline 1 requires a tenant who lives in a single-family dwelling to be responsible for routine yard maintenance, which includes cutting grass, and clearing snow and the landlord is responsible for major projects, such as tree cutting and pruning.

I therefore dismiss the landlord's monetary claim for lawn maintenance and repair of \$2350.00, without leave to reapply.

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

I find the landlord has proven a total monetary claim of \$8820.00, comprised of unpaid rent in the amount of \$8720.00 and the filing fee of \$100.00.

I allow the landlord to deduct the tenant's security deposit and interest of \$1032.86 and I grant the landlord a monetary order for the balance due in the amount of \$7787.44, which is enclosed with the landlord's Decision. This order is a legally binding, final

order, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply.

Tenant's application-

As I have found that the 10 Day Notices to End Tenancy issued by the landlord are valid and enforceable, I dismiss the tenant's application for dispute resolution seeking cancellation of the Notices, **without leave to reapply**.

I dismiss the portion of the tenant's application dealing with request for orders and authorizations under the Act, **with leave to reapply**.

Conclusion

The landlord is granted an order of possession and a monetary order in the amount of \$7787.44.

The tenant's application to cancel the 10 Day Notices to End Tenancy is dismissed, without leave to reapply.

As I have issued the landlord an order of possession, I have not considered the tenant's request to cancel the 1 Month Notice to End Tenancy for Cause.

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: July 11, 2012.

Residential Tenancy Branch