

DECISION

Dispute Codes:

Tenant's application filed July 5, 2012: CNC; CNR; MNDC; ERP

Landlord's application filed July 9 and amended July 10, 2012: OPR; MNR; MNSD; MNDC; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to cancel a Notice to End Tenancy for Cause and a Notice to End Tenancy for Unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; and an Order that the Landlord make emergency repairs to the rental unit.

The Landlord seeks an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of the Landlord's monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing and were provided the opportunity to be heard, present evidence and to make submissions.

The Tenant testified that he handed his Notice of Hearing documents to an agent of the Landlord's at the building manager's office on July 17, 2012 at 8:02 p.m. with a witness present. He stated that he provided the Landlord with copies of his documentary evidence on July 18, 2012.

The Landlord's agent SM testified that the Landlord mailed the Tenant its Notice of Hearing documents and copies of the Landlord's documentary evidence, by registered mail to the rental unit, on July 10, 2012. The Landlord's agent testified that the package included the Landlord's amended Application for Dispute Resolution. The Landlord provided copies of the registered mail receipt and tracking numbers in evidence.

The Tenant did not have an explanation for why he did not provide the Landlord with his Notice of Hearing documents within three days of filing his application as required by Section 59(3) of the Act. However, the Landlord's agent SM indicated that the Landlord wished to go ahead with the applications today and did not require more time to prepare for the Hearing.

Preliminary Matters

The Landlord's agent SM testified that the Landlord received the Tenant's documentary evidence, which consisted of a bound booklet of submissions including "exhibits" under

tabs A –K, however he stated that the contents of tabs C and L were missing from his copy of the booklet. I explained to the Landlord's agent that tabs C and L in my copy were also missing, but that C purported to be a copy of the Tenant's Application for Dispute Resolution which we both have. The contents of tab L purported to be "pictures of lack of repair to the rental unit", which the Residential Tenancy Branch was provided under separate cover by fax, albeit late. The Landlord's agent stated that he did not receive any documentary evidence from the Tenant other than the bound booklet of submissions and exhibits and therefore the pictures were not considered at the Hearing or in my Decision.

The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I find that the Tenant's requests for compensation for damage or loss under the Act, regulation or tenancy agreement; and an Order that the Landlord make emergency repairs to the rental unit are not sufficiently related to the Tenant's request to cancel the two Notices to End Tenancy. For these reasons, I dismissed these two portions of the Tenant's application **with leave to reapply**. The Hearing continued with respect to the Tenant's application to cancel the two Notices to End Tenancy and the Landlord's application for an Order of Possession and Monetary Orders for unpaid rent, loss of revenue, late fees and off-setting the security deposit.

Issues to be Decided

- Should the Notices to End Tenancy be cancelled?
- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to unpaid rent for June, late fees for June's rent and loss of revenue for July, 2012?
- Is the Landlord entitled to retain the security deposit in partial satisfaction of its monetary award?

Background and Evidence

A copy of a tenancy agreement signed August 29, 2010, was provided in evidence, however this tenancy began in February, 2010. Monthly rent is currently \$886.55, due on the first day of each month. The Tenant paid a security deposit in the amount of \$212.50 on August 18, 2012.

The Landlord's agents provided the following testimony and submissions:

The Tenant did not pay all of the rent when it was due on July 1, 2012, so the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and posted it to the Tenant's door at 10:37 a.m. on July 2, 2012.

The Tenant made the following payments towards rent:

June 27, 2012	\$425.00
July 5, 2012 (paid by third party)	\$375.00
July 23, 2012	\$86.55

The Landlord's agent accepted the balance of the outstanding rent on July 23, 2012, for "use and occupancy only" and did not agree to reinstate the tenancy. The Landlord provided the Tenant a receipt with "use and occupancy only" written on the receipt.

The Landlord's position is that the rent was not paid in full within 5 days of the Tenant receiving the Notice and therefore, the Landlord is entitled to an Order of Possession.

The Landlord's Application for Dispute Resolution also seeks a monetary award for a late fee in the amount of \$25.00 and loss of revenue for the month of August in the amount of \$886.55. The Landlord withdrew its application for the late fee. The Landlord seeks to retain the security deposit in partial satisfaction of its monetary award.

The Tenant and his advocate provided the following testimony and submissions:

In March, 2012, the building manager became the new resident manager at the rental property. Since he began managing the building, the building manager has threatened the Tenant with eviction, attempted to isolate him socially from other occupants in the building, and spread false rumours about the Tenant. On June 25, 2012, the building manager assaulted the Tenant, causing injury to his ribs and chest.

The Tenant's ceiling has been leaking whenever the upstairs occupant takes a shower. This has been occurring for years and the Landlord will not fix the leak.

Since the beginning of the tenancy, the Tenant has had a series of co-tenants who have signed tenancy agreements with the Landlord as co-tenants with the Tenant. These co-tenants paid ½ of the rent. After the Tenant's last co-tenant moved out of the rental unit, the building manager refused to allow two new potential co-tenants, which has resulted in difficulties for the Tenant to pay the rent. The Tenant's advocate likened this refusal to "constructive dismissal", stating that the Landlord's agent was attempting to "constructively evict" the Tenant by withholding approval of co-tenants.

The Landlord's agent gave the following reply:

Rent has been late even when the Tenant had a roommate. The Tenant has been late 9 times over the past 1 ½ years. The Landlord is in the business of renting apartments, not in the business of evicting Tenants.

Analysis

As explained to the parties during the Hearing, a landlord cannot unreasonably restrict a tenant from having guests or other occupants in the rental unit. The Tenant could have had a roommate to help with the cost of the rent and the roommate would have been an occupant, with no rights or responsibilities under the Act.

Section 26 of the Act states:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the Tenant did not have a right under the Act to deduct all or a portion of the rent. In his testimony, the Tenant made reference to a previous Hearing which took place in May of 2011, wherein he was awarded a Monetary Order in the amount of \$1,200.00. The Tenant may or may not have a valid claim for further compensation from the Landlord, but at the time that the rent was due on July 1, 2012, the Tenant had no right under the Act to deduct any of the rent because the Monetary Order issued in May, 2011 was already paid in full. The Tenant's remedy would have been to file another Application for Dispute Resolution prior to July 1, 2012, and seek an Order from the Director that he could deduct a portion of the rent for repairs, services or facilities agreed upon but not provided, or seek another Monetary Order for compensation for damage or loss. He did not.

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find that the Tenant did not pay rent when it was due, or within 5 days after receipt of the Notice. I find that the Tenant did not have a right under the Act to deduct any rent. **The Tenant's application to cancel the Notice is dismissed.** I find that the Notice is a valid Notice.

Section 90 of the Act deems service by posting a document on the Tenant's door to be effected 3 days after posting the document, in this case July 5, 2012. **I find that the tenancy ended on July 15, 2012.** However, the Landlord provided the Tenant with use and occupancy of the rental unit for the month of July, 2012, and therefore I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., July 31, 2012.**

As the tenancy has ended, I need not consider the Tenant's application to cancel the Notice to End Tenancy for Cause. This portion of the Tenant's application is **dismissed.**

Rent for the month of July, 2012, has been paid in full and therefore the Landlord's request for a monetary award for unpaid rent is **dismissed.** I find that the Landlord is entitled to loss of revenue for the month of August, 2012, in the amount of **\$866.55.** In a month-to-month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of revenue suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the filing fee from the Tenant.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit towards partial satisfaction of its monetary award. No interest has accrued on the security deposit.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Loss of revenue for August, 2012	\$866.55
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$916.55
Less set off of security deposit	<u>-\$212.50</u>
BALANCE DUE TO THE LANDLORD	\$704.05

Conclusion

The Tenant's application to cancel the Notices to End Tenancy is **dismissed**. The remainder of the Tenant's application is **dismissed with leave to reapply**.

I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., July 31, 2012**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord Monetary Order in the amount of **\$704.05** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: July 27, 2012.

Residential Tenancy Branch