



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application filed July 27, 2012: CNC; MNDC; ERP; RP; RR; FF

Landlord's application filed August 7 and amended August 10, 2012: OPR; MNR; MNSD; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to cancel a *One Month Notice to End Tenancy for Cause issued July 19, 2012* (the "Notice"); compensation for damage or loss under the Act, Regulation or tenancy agreement; Orders that the Landlord make regular and emergency repairs to the rental unit; a rent reduction for repairs, services and facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord.

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent; 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.

On August 14, 2012, the Landlord made a request pursuant to Rule 9.2 of the Rules of Procedure, to have an official recording of the Hearing. On August 15, 2012, the Landlord's request was granted on conditions, and both parties were provided a copy of the Interim Decision granting the Landlord's request.

Preliminary Matters

At the outset of the Hearing, counsel for the Landlord made application pursuant to the provisions of Section 62(4) of the Act that the Tenant's application for compensation be dismissed because the Landlord received no details or monetary breakdown from the Tenant in support of his claim. The Landlord's counsel submitted that there was no substance to the Tenant's monetary claim.

The Landlord's agent testified that she mailed the Landlord's Notice of Hearing documents and copies of documentary evidence to the Tenant, by registered mail, on August 11, 2012, to the rental unit. The Landlord's agent provided a copy of the registered mail receipt and tracking number in evidence. The Tenant acknowledged receipt of the documents.

The Tenant testified that he had provided the Landlord with his Notice of Hearing documents and copies of his documentary evidence to the Landlord's agent, in accordance with the Landlord's Letter of Authorization dated July 18, 2012. This letter authorized the Landlord's agent to act as its agent with respect to any outstanding issues regarding the tenancy and instructed the Tenant to deal with the Landlord's agents only. The Letter of Authorization was signed by an authorized signatory of the Landlord.

I itemized the documents that the Tenant had provided to the Residential Tenancy Branch and the Landlord's agent stated that she had received copies of all of the documents.

I find that the Tenant acted in accordance with the Letter of Authorization and that therefore the Landlord had been served with copies of the Tenant's documents in accordance with the provisions of Section 88(b) of the Act. Therefore, I dismissed the Landlord's counsel's request to dismiss the Tenant's application for a monetary order.

However, I find that that the Tenant's claim for compensation for damage or loss; his application for a rent reduction; and requests for Orders that the Landlord make repairs to the rental unit are not sufficiently related to the main issue, which is to cancel the Notice. For these reasons, I dismiss the Tenant's application for a Monetary Order and other Orders **with leave to reapply**, pursuant to the provisions of Rule 2.3 of the Rules of Procedure.

Issues to be Decided

- Is the Notice a valid notice?
- Is the Landlord entitled to a Monetary Order for unpaid rent for the month of August, 2012?
- May the Landlord apply the security deposit, and accrued interest, to its monetary award?

Background and Evidence

Rent is \$959.04 due on the first day of each month. The Tenant stated that he has lived in the rental unit for 10 years. He stated that he paid a security deposit on October 1 of 2001 or 2002, but he could not remember the year for certain.

The Landlord's witness testified that the Landlord inherited this tenancy from the Tenant's previous landlord about 5 or 6 years ago. She stated that the Tenant paid a security deposit in the amount of \$387.50 on October 8, 2003.

The Landlord's agent testified that the Tenant was late paying rent for May, June and July, 2012 and therefore the Landlord issued the Notice on July 19, 2012 and served it on the same day. The Landlord's agent stated that the Tenant has not paid rent for the month of August, 2012.

The Tenant acknowledged that he had been late paying rent for May, June and July, 2012. He stated that he was upset because the Landlord is a "slumlord" and will not do required repairs to the rental unit. The Tenant also acknowledged that he had not paid rent for August, 2012.

The Tenant stated that he was going to tear out the cupboards and all the improvements he had made to the rental unit if he was evicted.

The Landlord's agent and the Landlord's counsel both asked for an immediate Order of Possession because they are concerned that the Tenant will cause extraordinary damage to the rental unit.

Analysis

The Notice discloses the following cause to end the tenancy:

The Tenant is repeatedly late paying rent.

Section 26 of the Act requires a tenant to pay rent when it is due, whether or not the landlord complies with the Act, unless he has a right under the Act to not pay all or a portion of the rent. For example, if a tenant has an Order from a Dispute Resolution Officer for a rent reduction, or a monetary award that can be deducted from future rent. In this case, the Tenant has no such right.

Section 47(1)(b) of the Act allows a landlord to end a tenancy if a tenant is repeatedly late paying rent. Residential Tenancy Branch Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice under Section 47(1)(b) of the Act. The Tenant acknowledged that he was late in May, June and July, 2012 and that he has not paid rent that was due on August 1, 2012. Therefore I find that the Tenant has been late paying rent 4 times in the last four months.

I find that the Notice is a valid notice and therefore the Tenant's application to cancel the Notice is dismissed. The Tenant has not been successful in his application and I find that he is not entitled to recover the cost of the filing fee from the Landlord.

I dismiss the Landlord's application for an early end to tenancy. The Landlord did not apply for an early end to tenancy on its Application for Dispute Resolution and therefore the Tenant has had no notice that it would be sought today.

The Notice was served on July 19, 2012, and therefore I find that the tenancy ends on August 31, 2012. The Landlord is hereby provided an Order of Possession effective that date.

The Tenant is strongly cautioned not to damage the rental unit. The Tenant has remedies under the Act if he believes he is entitled to compensation from the Landlord.

The Tenant has not paid rent for August and I find that the Landlord is entitled to a monetary award for unpaid rent in the amount of \$959.04. Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit together with interest in the amount of \$13.73, towards partial satisfaction of its monetary award.

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

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

Unpaid rent for August, 2012	\$959.04
Recovery of filing fee	<u>\$50.00</u>
Subtotal	\$1,009.04
Less security deposit and accrued interest	<u>-\$401.23</u>
TOTAL	\$607.81

Conclusion

The Tenant's application to cancel the Notice to End Tenancy issued July 19, 2012, and to recover the cost of the filing fee from the Landlord is dismissed. The remainder of his application is **dismissed with leave to reapply**.

I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., August 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 a Monetary Order in the amount of **\$607.81** 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: August 24, 2012.

Residential Tenancy Branch