

DECISION

Dispute Codes OPR, OPC, OPB, MNDC, O, FF, CNR, CNC, MNDC, OLC, LRE, OPT

Introduction

There are applications filed by both parties. The Landlord has applied for an order of possession for unpaid rent or utilities, to end the tenancy for cause, because the Tenant has breached an agreement with the Landlord, a monetary order request for money owed or compensation for damage or loss and recovery of the filing fee. The Tenant has made an application to cancel the notice to end tenancy issued for unpaid rent, to cancel a notice to end tenancy issued for cause, a monetary order for loss of quiet enjoyment, an order for the Landlord to comply with the Act, regulation or tenancy agreement, suspend or set conditions on the Landlord's right to enter the rental unit and to obtain an order of possession for the rental unit.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have acknowledged receiving the notice of hearing packages for each of their applications and the evidence submitted in support, I am satisfied that both parties have been properly served.

It was clarified with both parties at the beginning of the hearing that as both parties agree that the monthly rent is \$700.00 and that the Landlord received a \$350.00 security deposit in exchange for the loft in the rental unit with access to the common areas that a tenancy does exist.

Both parties clarified that the Tenant's request for an order of possession is not necessary as the Tenant currently has access/possession of the rental.

It was further clarified by the Landlord that he was seeking monetary compensation for the loss of rental income and to change the locks. I find that as these claims have not yet occurred that the Landlord's monetary claim is premature and that this portion of the Landlord's claim is dismissed with leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Tenant entitled to an order cancelling the notice to end tenancy for unpaid rent?

Is the Tenant entitled to an order cancelling the notice to end tenancy for cause?
Is the Tenant entitled to a monetary order for loss of quiet enjoyment?
Is the Tenant entitled to an order for Landlord to comply with the Act?
Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

Background, Evidence and Analysis

This Tenancy began on September 1, 2012 on a month to month basis. No signed tenancy agreement exists. Both parties agree that the monthly rent is \$700.00 payable on the 1st of each month and that a security deposit of \$350.00 was paid.

Both parties agree that the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent on October 2, 2012. Landlord has submitted a copy of the notice dated October 2, 2012 which states that rent of \$700.00 was due on October 1, 2012 and was unpaid. The effective date of the notice is stated as October 15, 2012. Both parties agreed that the Tenant made late partial payments on October 3, 2012 by "E-Transfer" of \$350.00 and again on October 7, 2012 of \$350.00. The Landlord has provided copies of the email transaction "E-Transfer" with a response to the Tenant that the payments were received "for use and occupancy only." The Tenant confirmed receiving the emails.

I accept the undisputed testimony that the Tenant was properly served with the 10 day notice to end tenancy for unpaid rent on October 2, 2012. Although the Tenant has applied for dispute resolution to dispute the notice, the Tenant has confirmed in his direct testimony the Landlord's documentary evidence that rent was paid late and that receipts were issued for use and occupancy only. The Landlord has established a claim for an order of possession based upon the effective date of the notice. Based upon the above, 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.

Although submitted, the 1month notice to end tenancy issued for cause and the Landlord's reasons were not considered for this decision.

As the Tenancy is at and end the Tenant's application for an order to comply, to suspend or set condition on the Landlord's right to enter are dismissed. The Tenant's application to cancel the notice to end tenancy for unpaid rent is dismissed.

The Tenant has made an application for a monetary order for \$1,500.00 for the loss of quiet enjoyment. The Tenant states that the Landlord's attempts at getting him to enter into a signed tenancy agreement after he moved in are forms of harassment. The Landlord disputes this stating that the Tenant had agreed to sign the tenancy agreement based upon their email exchanges, but did not. The Landlord was seeking a form of security to establish the terms of the tenancy. The Tenant states that this constituted harassment. I find that the Tenant has failed to provide sufficient evidence that any harassment took place. The Tenant's monetary request is dismissed.

Conclusion

The Landlord is granted an order of possession.

The Tenant's monetary request 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: October 19, 2012.

Residential Tenancy Branch