



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, CNR, MNDC, OPR, MNR, MNSD, FF

Introduction

This was the hearing of applications by the landlord and by the tenant. The hearing was conducted by conference call. The landlord's representative called in and participated in the hearing. The tenant did not attend although this was the hearing of his application and he was served with the landlord's application and Notice of Hearing sent by registered mail on October 12, 2012.

Issue(s) to be Decided

Should the Notice to End Tenancy for unpaid rent be cancelled? Is the landlord entitled to an order for possession?

Is the tenant entitled to a monetary order and if so, in what amount?

Is the landlord entitled to a monetary order and if so, in what amount?

Preliminary matter

In his application for dispute resolution the tenant said that he was hired by the landlord as its maintenance manager. He claimed payment of the sum of \$2,092.00 as unpaid wages or as the amount due for services rendered to the landlord.

The *Residential Tenancy Act* provides by section 2:

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

The *Act* governs the relationships, rights and responsibilities of tenants and landlords; it mandates the essential contents of residential tenancy agreements and determines how, and under what circumstances tenancy agreements may be ended. The *Act* does

not govern the relationships or contractual agreements of landlords and tenants that are separate from their relationships as landlord and tenant; for example a landlord's resident manager may be a tenant as an adjunct to his employment by the landlord, but the *Act* conveys no jurisdiction to supervise or enforce rights under the contract of employment, as distinct from the tenancy.

I find that I do not have jurisdiction to consider the tenant's claim for compensation for services rendered because it is not a matter that falls under the *Residential Tenancy Act*. If the tenant wishes to pursue a claim for compensation for services rendered he will have to bring it in another forum. The landlord testified that the tenant moved out of the rental unit on October 31, 2012 and she now has possession of the rental unit. There is no longer any basis for the tenant's application to dispute the landlord's 10 day Notice to End Tenancy for unpaid rent and in the absence of an appearance by the tenant at this hearing, the tenant's application for dispute resolution is dismissed without leave to reapply.

Background and Evidence

The rental unit is an apartment in an 11 unit building in Kelowna. The tenancy began on September 1, 2012 for a one year term with rent in the amount of \$875.00 and \$100.00 for utilities due on the first of each month. The tenant paid a security deposit of \$437.50 on August 15, 2012.

The landlord testified that the tenant failed to pay rent and Utilities for October in the amount of \$975.00. The landlord's tenancy agreement contains a provision calling for payment of a \$20.00 fee for each day that a rent payment is late. The landlord has claimed payment of \$640.00 in late fees. The landlord testified that the tenant was given keys to the rental property and failed to return them, thereby necessitating the rekeying of the locks. The landlord claimed payment of \$200.00 for locksmith services. The submitted an invoice from a locksmith in the amount of \$263.20, but said that she was limiting her claim to \$200.00.

Analysis and conclusion

The landlord has possession of the rental unit; an order for possession is not required and the landlord's application for an order for possession is dismissed. I accept the landlord's evidence that rent and utilities were not paid for October and I award the landlord the sum of \$975.00 as claimed. I find that the landlord is entitled to recover the cost of rekeying because the tenant did not return the keys to the landlord on request.

I deny the landlord's claim for late fees in the amount of \$640.00 because the Residential Tenancy Regulation limits late fees to a maximum amount of \$25.00 if the tenancy agreement provides for such a charge. The provision in the contract providing for a \$20.00 daily late charge is an illegal term and therefore unenforceable.

The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$1,225.00. I order that the landlord retain the security deposit of \$437.50 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance due of \$787.50. This order may be filed in the Small Claims Court 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: November 02, 2012.

Residential Tenancy Branch