



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF, RP, RR

Introduction

There are applications filed by both parties. The Landlord had made an application for an order of possession and a monetary order claim for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The Tenant had made an application for a monetary claim for money owed or compensation for damage or loss, to have the Landlord make repairs to the rental and to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the documentary evidence, I am satisfied that both parties have been properly served with both of the notice of hearing and evidence packages.

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?
- Is the Landlord entitled to a monetary order?
- Is the Landlord entitled to retain the security deposit?
- Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

This Tenancy began on November 1, 2011 on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$1,270.00

payable on the 1st of each month and a security deposit of \$635.00 was paid on November 6, 2011.

Both parties agreed that the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent dated January 25, 2013 by posting it to the rental door on the same date. The Tenant has admitted in his direct testimony to not paying the rent or make any subsequent rent payments since the notice was served.

I find based upon the testimony of both parties that the Landlord has established a claim for an order of possession and a monetary claim for unpaid rent of \$2,540.00 (January and February). The Landlord's Application is granted. The Tenant's Application to cancel the notice to end tenancy is dismissed. As the Tenancy is coming to an end the Tenant's request for repairs and to be allowed to reduce rent is also dismissed.

The Tenant seeks a monetary claim for \$7,000.00 (\$500.00 X 14 months). The Tenant states that this is for loss of rental income he would have received for bringing in a roommate at \$500.00 a month for one of the spare bedrooms. The Tenant claims that the rental was not in satisfactory condition since the beginning of the tenancy and refers to a letter sent to the Landlord dated November 30, 2011. The letter describes the upstairs two bedrooms as uninhabitable because of mold. The letter makes reference to possible compensation and work/cleaning to be performed by the Tenant. The letter also refers to a response from the Landlord within 72 hours. The Landlord disputes that the Tenant gave notice of these issues or receiving this letter. The Landlord alleges that the Tenant back dated the letter for this hearing as he received it as part of the hearing package for as evidence. The Landlord states that the Tenant has resided in the rental for approximately 14 months with no issues and has only brought forward this claim as a result of the 10 day notice to end tenancy. The Tenant relies on the November 30, 2011 letter, various dated photographs and his own completed condition inspection report without the Landlord.

I prefer the evidence of the Landlord over that of the Tenant. I find that as the Tenant stated that notice of issues was given in November 2011 (first month of tenancy), the Tenant has provided photographs dated October 19, 2011, February 12, 2011 prior to the start of the tenancy that this is inconsistent and in conflict with the direct testimony of the Tenant. The Tenant has stated in his direct testimony that he had a roommate for this tenancy up until one month ago (13 months). I find that this is also contradictory to the direct testimony that the rental unit was uninhabitable.

The onus or burden of proof is on the party making the claim, in this case both parties are responsible as they have each made an application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I find the Tenant has failed to establish a monetary claim. The Tenant's Application is dismissed.

The Landlord is granted 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.

As for the Landlord's monetary claim, I find that the Landlord is entitled to \$2,540.00. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$635.00 security deposit and is granted a monetary order under section 67 for the balance due of \$1,955.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant's Application is dismissed without leave to reapply.
The Landlord is granted an order of possession and a monetary order for \$1,955.00.

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: February 19, 2013

Residential Tenancy Branch

