



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OP, MND, MNSD, MT, CNC, CNR FF,

Introduction

This hearing was convened in response to applications filed by both the landlord and the tenant.

The landlord seeks:

1. An Order of Possession;
2. A monetary Order for damage;
3. An Order to be allowed to retain the security deposit; and
4. Recovery of the filing fee paid for this application.

The tenant seeks:

1. More time to make an application to cancel a Notice to End Tenancy;
2. To cancel a Notice to End Tenancy given for Cause; and
3. To cancel a Notice to End Tenancy given for unpaid rent;

Issue(s) to be Decided

Does the tenant have an extraordinary reason for not filing his application seeking to dispute the Notices on time? Does the landlord have cause to end this tenancy? Has the landlord met the burden of proving his claim for damages?

Background and Evidence

The tenant was served with a 10 day Notice to End Tenancy for unpaid rent dated February 26, 2013. On the Notice it is noted that the sum sought is a \$218.00 repair fee.

Both parties agree that the tenant was also served with a Notice to End Tenancy for Cause on February 27, 2012. The landlord alleges that the tenant has caused extraordinary damage to the rental unit and that he has breached a material term of the tenancy agreement. The Notice filed in evidence notes that the tenant had 10 days within which to dispute the Notice, the tenant filed his application on March 14, 2013. The tenant testified that he does not know whether he was late in filing his application or not, he cannot recall whether he filed an application seeking more time. He says that he was provided with paperwork which he completed and returned. The tenant did not supply a reason for the delay in filing his paperwork.

With respect to the landlord's application for a monetary award, the landlord says the tenant left a tap on in his unit and this caused flooding in the suite below. The landlord says it was necessary to shampoo carpets, replace a heat detector that was damaged by the water and replace some drywall. The landlord submitted invoices to show that the cost of these repairs and cleaning was \$168.00. The landlord is also claiming a \$50.00 NSF fee because the tenant's February rent cheque was returned NSF.

The tenant says the landlord deposited the rent cheque early and that is why it was returned. The tenant says that this manager has no idea what happened in the rental unit because he was not the manager at the time. Further that the landlord did not pay any sums to have the rental unit repaired or the carpet shampooed because the other manager did the work.

The tenant asked if he would be appeal to appeal this matter.

Analysis

The 10 day Notice to End Tenancy requests a sum which is not rent and only rent or utilities can be claimed on such a Notice. This Notice is therefore cancelled.

With respect to the Notice to End Tenancy for Cause, the tenant had 10 days within which to seek to cancel that notice but he did not make his application until 15 days after the agreed date of service. The tenant did make an application seeking to extend the time for filing an application seeking to dispute a notice. However at the hearing of the matter the tenant stated that he did not believe he needed to make such an application. Further, despite being given several opportunities to do so, the tenant did not provide any reasons for not filing his application within the correct time frame.

The *Residential Tenancy Act* provides that an arbitrator may extend or modify a time limit established by these Acts only in **exceptional circumstances**.

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the required time must be very strong and compelling. As one Court noted, a "reason" without any force of persuasion is merely an excuse, thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

In this case however the tenant did not submit any evidence of any extraordinary circumstances which prevented him from filing his application on time. I therefore dismiss the tenant's application for more time to make this application.

The landlord has made an application for an Order of Possession and I find that he is entitled to that Order. In not filing his application within the time limits allowed under the Act it is as though the tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. The effective date on the Notice is March 31, 2013 and I will therefore issue an Order of Possession effective at 1 o'clock in the afternoon on that date.

The landlord has also sought recovery of the costs for making repairs to the rental unit. The landlord has provided invoices for this cleaning and repairs. The tenant's response was to dispute that the landlord actually paid sums to clean and make repairs. Based on the invoice evidence supplied by the landlord, even if another member of staff did the work, I find that time was expended by the landlord to clean and make repairs as result of some negligence on the part of the tenant which the tenant did not dispute. I therefore find that the landlord is entitled to recover the \$168.00 he paid for the cleaning and repairs.

With respect to the recovery of the \$50.00 NSF fee the landlord did not provide evidence from his bank as to the fee charged a \$50.00 "NSF Fee" exceeds the sum allowed by the Act for such fees. This claim is therefore dismissed.

Having been successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fees paid for this application.

The landlord holds a \$300.00 security deposit paid June 18, 2012 (no interest having accrued). I will allow the landlord to deduct the \$168.00 repair/cleaning costs and the \$50.00 filing fee from that deposit and direct that the landlord return \$82.00 to the tenant forthwith.

Conclusion

The landlord is provided with a formal Order of Possession. This is a final and binding order which may be enforced as an Order of the Supreme Court of British Columbia.

The tenant is provided with a formal copy of an order for the total monetary award of \$82.00 as set out above. This is also a final and binding Order which may be enforced as an Order of the Provincial Court of British Columbia.

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: March 18, 2013

Residential Tenancy Branch