



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Coporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MND, MNDC, OPC

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order .Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The tenancy began on or about August 1, 2010. Rent in the amount of \$710.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$347.50.

The landlord gave the following testimony:

On January 15, 2013 the landlord became aware of a water leak on the main floor of the complex. The water was leaking into a ground level unit and common area hallway. The landlord stated that the “flood” was caused by the subject tenant overflowing his tub and the water coming through his floor on the second level. The landlord and tenant signed a mutual end of tenancy to be effective on April 30, 2013. The landlord stated that he wished to have the order of possession take effect immediately as the tenant has been verbally abusive to him and his wife. The landlord had the local authorities attend the

building after a shouting match had occurred with the subject tenant. The landlord is seeking \$1192.80 for the costs of having the carpet cleaning company attend to remove all the water and have fans and de-humidifiers run to remediate any residual moisture.

The tenant gave the following testimony:

The tenant stated that the landlord was “straight out lying” about the water leak. The tenant stated that on January 15, 2013 the landlord never attended his unit to assess or inspect if the leak came from the subject tenants suite. The tenant stated the landlord or his repairman never came to do any repairs or inspections on the plumbing. The tenant agreed that he and the landlords have had arguments but disputes that he was ever threatening or abusive.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the landlord must prove their claim. 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 the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

At the outset of the hearing both parties acknowledged that they had come to an agreement that the tenancy would end on April 30, 2013. Near the end of the hearing the landlord changed his mind and requested that the order of possession be effective sooner as he felt the tenant was a danger to his safety and the safety of other tenants. I have reviewed all the documentary evidence and testimony submitted for this hearing. The landlord has not satisfied me that the tenant is a risk and that the tenancy should end any sooner than what was originally agreed to. The landlord did not provide sufficient documentation to support an early end of tenancy and in addition; the tenant was clear and consistent throughout the hearing that he would be moving at the end of the month and had no intention of staying longer. Based on the above facts I find that

the landlord is entitled to an order of possession. That order of possession will take effect at 1:00p.m. on April 30, 2013. 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.

The landlord is also seeking to recover \$1192.80 he paid the carpet company to remove all the water that had leaked into the common area and ground level unit. In the landlords own testimony he stated that he did not attend the subject tenants unit to investigate or inspect if the leak did in fact come from the tenants suite. The landlord made an assumption that is where the leak originated. The landlord has not satisfied me that the tenant acted in a negligent way and was the cause of the water leak and accordingly I dismiss this portion of the landlords' application.

The landlord is entitled to recovery of the \$50.00 filing fee. I grant the landlord an order under section 67 for the balance due of \$50.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$50.00.

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: April 11, 2013

Residential Tenancy Branch

