



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MNR, FF / CNC, MNDC, RP, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession for cause / a monetary order as compensation for unpaid rent or utilities / and recovery of the filing fee; and ii) by the tenant for cancellation of a 1 month notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the fixed term of tenancy is said to be from May 1, 2012 to May 1, 2013. The parties appear to agree that in the absence of an agreement to enter into another fixed term, the tenancy has become a month-to-month tenancy. Monthly rent of \$1,850.00 is due and payable in advance on the first day of each month, and a security deposit of \$900.00 was collected. A move-in condition inspection report was not completed.

The parties disagree around whether the rent does or does not include water + sewer utilities. The landlord testified that the rent does not include water + sewer, and that the tenancy agreement clearly speaks to this. The landlord also testified that he gave the tenant a copy of the tenancy agreement near the start of tenancy. The tenant disputes that he received a copy of the tenancy agreement.

The landlord issued a 1 month notice to end tenancy for cause dated March 12, 2013. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. Reasons identified on the notice in support of its issuance are as follows:

Tenant is repeatedly late paying rent.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant filed an application to dispute the notice on April 14, 2013. Thereafter, the landlord filed his application for dispute resolution on May 3, 2013.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the limited documentary evidence and the affirmed testimony of the parties, the various aspects of the respective applications and my findings around each are set out below.

LANDLORD

Order of possession.

Section 47 of the Act addresses **Landlord's notice: cause**. I find that the tenant was served with a 1 month notice to end tenancy for cause dated March 12, 2013. As the notice was served on that same date, pursuant to section 47(4) of the Act, the tenant had 10 days from March 12, 2013 to dispute the notice. The 10th day is March 22, 2013. As the tenant's application to dispute the notice was filed on April 14, 2013, I find that the application to dispute the notice was filed outside the statutory period of time available. In the result, I find that the landlord has established entitlement to an **order of possession**.

\$3,120.00: 2013 & 2014 water + sewer bill / stress / time off work.

Relevant documentary evidence is limited to a utility bill for water + sewer for the calendar year 2013, in the amount of \$1,160.00. As to water + sewer for 2014, as it is yet only 2013, there is no billing before me in evidence for the calendar year 2014. In

any event, as earlier noted, the parties disagree around whether water + sewer are included in the rent and there is no written tenancy agreement in evidence. The aspect of the application concerning unpaid water + sewer utilities for 2014 is hereby dismissed. The aspect of the application concerning unpaid water + sewer utilities for 2013 is hereby dismissed with leave to reapply.

The landlord has submitted no documentary evidence in support of the aspects of his application which concern the tenancy in association with compensation arising from stress and time off work. Accordingly, these aspects of the application for compensation are hereby dismissed.

\$50.00: *filing fee.*

As the landlord has partially succeeded with his application, I find that he has established entitlement to recovery of **\$25.00**, or half the filing fee. I order that the landlord withhold this amount from the tenant's security deposit at the end of tenancy.

TENANT

\$615.00: *reimbursement of 10 days rent from May 5 to 15, 2012.*

\$1,500.00: *cleaning house and windows.*

\$280.00: *carpet cleaning.*

\$200.00: *air duct cleaning.*

\$600.00: *compensation for flooding and cleaning required of 5 Persian rugs.*

\$3,700.00: *the equivalent of 2 months' rent for "moral" damage.*

There is an absence of conclusive documentary evidence to support any of the above particular aspects of the tenant's application, and the landlord disputes the tenant's claim(s) in all respects. In an e-mail from the tenant to the landlord dated March 8, 2013, the tenant states in part, as follows:

After, my coming back home I didn't notice any changes. As we agreed, you have to do next:

1. Change the sink in kitchen
2. Fix the kitchen drawers
3. Fix the bathroom water regulator as it wastes more water which is not in our mutual benefit
4. Cleaning the yard. Which was done only 30% of that
5. Changing the lattice on few windows.

Further to the above e-mail, there is otherwise no evidence of e-mail or other communication from the tenant to the landlord in which the tenant identifies particular concerns related to any of the particular concerns around which the tenant seeks compensation. As well, there is no evidence of e-mail or other communication between the parties which confirms any agreement(s) reached between the parties related to any of the above. Additionally, there are no receipts, or in cases where the tenant claims to have undertaken certain work himself, there are no time logs or explanations addressing the manner in which the various specific amounts of alleged entitlement have been calculated. Following from the foregoing, all of the above aspects of the tenant's application are hereby dismissed, as is the application for an order instructing the landlord to make repairs to the unit, site or property.

\$50.00: *filing fee*.

As the tenant has not succeeded with the principal aspects of his application, the application to recover the filing fee is also hereby dismissed.

Finally, as the end of tenancy approaches, the attention of the parties is drawn to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective **1:00 p.m., Friday, May 31, 2013**. This order must be served on the tenant. 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.

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: May 13, 2013

Residential Tenancy Branch