



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Northstar Int'l Motor Hotel Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, CNR, OLC, LRE, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The Tenant applied on April 10, 2013 for:

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. A Monetary Order for compensation or loss - Section 67;
3. An Order for the Landlord to comply with the Act – Section 62;
4. An Order suspending or setting conditions on the landlord's right to enter the unit – Section 70; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on April 11, 2013 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice valid?

Is the Landlord entitled to an order of possession?

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to an order that the Landlord comply with the Act?

Is the Tenant entitled to an order that the Landlord's right to enter the unit be suspended or have conditions?

Is the Landlord entitled to recovery of the filing fee?

Preliminary Matter

After hearing evidence from both Parties on the Landlord's application and making findings in relation to the application, the Tenant requested an adjournment as the Landlord's application had not been received by the Tenant until April 24, 2013. The Landlord states that the application was given to the Tenant on April 15, 2013. The Tenant states that the adjournment is necessary to be able to respond to the Landlord's application. The Tenant then requested an adjournment to seek legal advice. Noting that this request followed full opportunity to the Tenant to provide evidence on the Landlord's application, including the opportunity for the Tenant to provide late evidence in relation to a rent receipt, I found that the Tenant's request is not based on any prejudice from the late receipt of the application but on the Tenant's dissatisfaction with the findings made at the hearing in relation to the Landlord's application. I therefore decline the Tenant's request for an adjournment.

Background and Evidence

The tenancy started on December 6, 2011. Rent of \$450.00 is payable monthly. NO security deposit was collected by the Landlord. The Tenant states that a 10 day notice to end tenancy for unpaid rent (the "Notice") was received from the Landlord on April 6, 2012. The Tenant states that rent is payable on the 7th day of each month. The Landlord states that rent is payable on the 6th day of each month and that the Notice is in relation to unpaid rent for March 2013. The Landlord states that rent has not been paid for March, April and May 2013 and claims 1,350.00. The Tenant states that March 2013 rent was paid and that the Tenant has a receipt for this payment. The Tenant was provided opportunity to send a copy of this rent receipt immediately following the

hearing. (It is noted that no rent receipt has been provided by the Tenant.) The Tenant states that no rent was paid for April and May and that the funds for April 2013 rent is available to the Landlord in the form of a money order but that the Tenant has not given this money order to the Landlord as the Tenant believes that the Landlord owes the Tenant compensation for losses in relation to the unit.

The Tenant states that between March 1 and April 2, 2013, the Tenant's right to quiet enjoyment was breached by the Landlord who failed to do anything about the tenants who live across the hall from the Tenant. The Tenant states that these tenants were dealing and using drugs and causing noise. The Tenant states that this was reported to the Landlord on three different occasions. The Tenant states that the police were never informed by the Tenant of these activities. The Landlord states that although no complaint was ever received from the Tenant, the Landlord was otherwise notified of drug dealing, that the Landlord gave these tenants a notice to end tenancy for cause effective April 1, 2013 and that these tenants did move out of the unit. The Landlord states that the matter was also reported to the police who were called on to remove the tenants. The Landlord states that if the Tenant had informed the Landlord of being so disturbed, the Tenant would have been given a different room.

The Tenant states that he does not feel safe in the unit due to murders and people dying in the rooms. The Tenant states that although the Landlord has never entered the Tenant's room without permission the Tenant has seen the Landlord pushing and banging on other door at 7:00 a.m. As a result the Tenant states that there is concern that the Landlord will enter the Tenant's room and remove articles. The Tenant is not seeking an order to restrict the Landlord's access but wants the Landlord to comply with the Act in relation to entering the unit. The Landlord states that since his work does not start until 9:00 a.m., the disturbance described by the Tenant did not involve the Landlord. The Landlord states that due to the use of drugs by some tenants in the buildings, there has been occasion where concerns are raised about overdoses and on those occasions the Landlord will enter a room to ensure that these tenants are okay.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. The Tenant has disputed the Notice however although the Tenant states that March 2013 rent was paid, the Tenant has not provided a copy of the rent receipt despite being given opportunity to do so. As a result, I find on a balance of probabilities that rent for March 2013 has not been paid and that the Notice is therefore valid. As the Notice is valid, I find that the Landlord has substantiated an entitlement to an order of possession. Based on the Tenant's evidence of unpaid rent for April and May, I also find that the Landlord has substantiated a monetary entitlement to **\$1,350.00**. As the Landlord's application has met with success I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,400.00**.

As the Tenant is not seeking an order in relation to the Landlord's right to access the unit, but does seek the Landlord's compliance with the Act, I provide the following relevant portions of the Act: Section 29 of the Act provides that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;

- (f) an emergency exists and the entry is necessary to protect life or property.
(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to freedom from unreasonable disturbance. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Accepting the undisputed evidence that the Landlord took immediate action in relation to the disturbance caused by the other tenants, I find that the Landlord took immediate and reasonable steps to ensure that the Tenant's right to quiet enjoyment was not infringed any longer than was possible given the time it takes to end a tenancy. As a result, I find that the Tenant has not substantiated that the Landlord either failed to comply with any part of the tenancy agreement or Act or that the Landlord caused any damages through negligence. I therefore dismiss the Tenant's claim for damages.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **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.

I grant the Landlord an order under Section 67 of the Act for **\$1,400.00**. If necessary, 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: May 09, 2013

Residential Tenancy Branch