



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

AMENDED DECISION

Dispute Codes OPR, OPC, OPB, MND, MNR, MNSD, MNDC, DR, CNC, CNR, FF

Introduction

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

1. To dispute an additional rent increase;
2. To cancel Notices to End Tenancy given for cause and unpaid rent;
3. Other; and
4. To recover the filing fee paid for this application.

The landlord seeks:

1. A monetary Order for damage, compensation for loss and unpaid rent;
2. An Order to be allowed to retain the pet and/or security deposit;
3. An Order of Possession for breach, cause and unpaid rent; and
4. Other

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Is either party entitled to the Orders sought?

Background and Evidence

The landlord says this tenancy began on March 1, 2013. The tenant says it began on January 12, 2013.

The tenant says the rent was fixed at \$1,000.00 per month payable in advance on the 12th of each month. As proof of the rent the tenant supplied a Shelter Information from

Social Development showing that he claimed to the Ministry he was paying \$500.00 of a total rent of \$1,000.00.

The landlord says the rent is \$1,250.00 per month payable in advance on the 11th of each month. The landlord says the tenant paid a pet and security deposit of \$1,250.00 on March 11, 2013. There is no written agreement.

The landlord submits he rented the apartment to a woman who moved out at which time the woman's ex (the current tenant) contacted him and asked if he could stay in the rental unit. The landlord agreed to allow the tenant to move in on a month-to-month basis. The landlord says that since this tenant moved in no rent was been paid. Further that the tenant has flooded the unit with feces from the toilet, destroyed the carpets smoking a "sheesha" pipe and let two other people stay in the rental unit without the landlord's permission. Further, that building management has informed him that the tenant is running a dog boarding/kennel business out of the apartment contrary to the rules.

The landlord says that on May 21, 2013 he served two Notices to End Tenancy in person on the tenant. One Notice for cause with respect to several grounds included repeated late payment of rent and another for unpaid rent in the amount of \$1,250.00 stating that it had become due on March 11, 2013. The landlord says the tenant has not paid any rent for March, April, May or June 2013 (\$5,000.00). The landlord says he did not state this total sum owing as of May 2013 on his 10 day Notice because he believed he could only put the current month's arrears not the total owing to date. The landlord claims \$5,000.00 for rental arrears and the balance for damages caused by the tenant to the rental unit although he has no invoices to prove this claim. The landlord decided to withdraw this portion of this claim at this time.

The tenant claims that he has paid all his rent but the landlord refuses to issue receipts. The tenant submitted cancelled cheques payable to the landlord on April 15, 2013 for \$600.00 and on April 22, 2013 of \$400.00. The tenant did not present any other evidence to prove other rent payments.

The tenant says the toilet was not his fault but due to poor plumbing.

The tenant says he will move out by June 28, 2013.

Analysis

The tenant has agreed to vacate the rental unit on June 28, 2013 and the landlord has agreed to this. I will issue an Order of Possession effective on that date at 1:00 p.m.

With respect to the amount of rent payable per month I will accept the landlord's evidence that it was \$1,250.00 per month because the tenant paid pet and security deposits which are in accordance with that sum.

With respect to the landlord's claim for rental arrears the tenant has failed to provide evidence that he has paid the rent. Although the tenant says this is because the landlord does not supply receipts, the evidence submitted by the tenant shows that the tenant made whatever payments he did make by way of his chequing account in which case it is reasonable and probable to presume he would have likely paid his rent by way of cheques would have therefore have had his cancelled cheques as proof of payment of the rent. That he has not supplied cancelled cheques or any other evidence of payment leads me to believe that he has not made the payments. I will therefore grant the landlord's claim for rent.

With respect to the amount of the rent owing, although the landlord says the tenant owes other arrears, he issued a 10 day Notice to End Tenancy stating the tenant owed only \$1,250.00 as of March 2013. The tenant had notice of that amount of arrears owing despite the fact that there may have been more, however, had the tenant paid that sum within the time limits allowed, the tenancy would have been reinstated, I will therefore rely on the sum the landlord noted in his 10 day Notice that \$1,250.00 begin with that sum. I will also allow the landlord to retain the security deposit and recover the filing fee for the cost of this application.

Calculation of monetary award in favour of the landlord:

| | | |
|--|--|--------------------------|
| | Arrears for March 12 to May 12 | \$1,250.00 |
| | <u>Arrears for April 12 to May 12</u> | <u>250.00</u> |
| | Arrears for May 12 to June 12 | 1,250.00 |
| | Rent due for June 12 to June 28 (tenancy end date) \$1,250.00/30=\$41.67 x 16 days) | 666.72 |
| | Filing Fee | 50.00 |
| | Less Security and pet deposit | -1,250.00 |
| | Total owing by the tenant to the landlord | <u>\$2,216.72</u> |

Conclusion

The landlord is provided with a formal copy of an order of possession. This is a final and binding Order enforceable as any Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. This is a final and binding Order enforceable as any 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: June 21, 2013

Residential Tenancy Branch