



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNDC, MNR, MDSD, CNC, CNR, LAT AS RR FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was sufficiently served by posting on June 30, 2013. I find that the 10 day Notice to End Tenancy was sufficiently served by posting. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on each other. The landlord testified that she did not receive the tenant's Application for Dispute Resolution/Notice of Hearing. The tenant's produced a receipt from Canada Post indicating that it had been sent by registered mail. In any event the landlord stated that she wanted to proceed with both claims at this time.

The landlord takes the position that the respondent AMC is not a tenant and has filed a claim against the respondent JJC only. The Application for Dispute Resolution filed by AMC and JJC alleges that they are both tenants. Further, they subsequently filed a subsequently letter seeking financial compensation. I have considered this to be an amendment of their application and have considered it accordingly.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?
- e. Whether the tenants are entitled to a repair order?
- f. Whether the tenants are entitled to an order cancelling the one month Notice to End Tenancy dated June 30, 2013?
- g. Whether the tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated July 2, 2013?
- h. Whether the tenants are entitled to an order changing the locks?
- i. Whether the tenants are entitled to an order allowing the tenant to assign or sublet the rental unit because the landlord's permission has been unreasonably refused?
- j. Whether the tenants are entitled to an order for the reduction of rent for repairs, services, or facilities agreed upon but not provided?
- k. Whether the tenants are entitled to a monetary order and if so how much?
- l. Whether the tenants are entitled to an order for reimbursement of the cost of the filing fee?

Background and Evidence

In October 2012 the landlord and JJC entered into an oral agreement that provided the term was month to month and that he tenant would pay rent of \$2000 per month payable on the first day of each month. Prior to agreeing to rent the rental unit JJC asked the landlord for permission to grow medicinal marijuana in the building at the side of the house. He produced paperwork that indicated that he held a permit to grow medical marijuana. He also produced documents that show that he would be growing it for other parties who also had appropriate permits. The landlord agreed to the

arrangement. She did not prepare a written tenancy agreement but instead prepared four Form F documents which were signed by the owner of the property giving their consent giving their consent to the growing at this location which are part of the process for obtaining governmental permission to grow medicinal marijuana.

The tenant had a difficult time paying the rent and the rent was reduced to \$1475. The landlord testified the tenant was late paying the rent for the months of January, February and March. JJC disputed the months but acknowledged that he was late on at least three occasions. The rent for June was paid late. The landlord agreed that a portion of the security deposit could be applied against the rent. As a result that landlord holds \$1225 in the form of a security deposit.

In May JJC indicated that he was not able to pay the rent and asked whether his girlfriend AMC could take over the lease. The landlord stated that she would have to meet with AMC before she could agree to such an arrangement.

On June 17, 2013 the police and City of Surrey inspected the rental property as the hydro usage was excessive. At that time it was discovered that the permits for the 4 people that the landlord had prepared the Form F referred to above had expired. Further the permit for JJC allowed him to grow medicinal marijuana at another address but not at this address. As a result the City took the position this was an illegal marijuana grow operations and the landlord was levied a controlled substance recovery fee of \$4461. It is unclear from the document produced by the landlord whether the charge was levied because of the failure of the permit to be associated with this address or whether it was because of the poor condition of the electrical.

AMC failed to contact the landlord and the landlord decided that she was no longer interested in entertaining the prospect of renting the rental property to AMC. The landlord served one month Notice to End Tenancy on the JCC by posting on June 30, 2013. The landlord served a 10 day Notice to End Tenancy on July 2, 2013 by posting.

JCC and AMC have written the landlord alleging the rental unit is not fit for habitation and demanding that the landlord make repairs. They have also demanded the landlord pay compensation to the tenants.

Analysis

After carefully considering the disputed facts I have made the following determination:

- The landlord and JCC entered into an oral month to month tenancy agreement commencing October 1, 2013. The rent was initially set at \$2000 per month. It was later reduced to \$1475.
- JCC paid a security deposit of \$2000 at the start of the tenancy. Part of the deposit was applied to outstanding rent leaving a balance of \$1225.
- In May JCC orally advised the landlord that he wished to end the tenancy and asked if his girlfriend could move into the rental unit. The landlord responded saying she would have to meet the girlfriend first.
- AMC failed to meet with the landlord. I determined there is no tenancy agreement between the landlord and AMC despite the fact that she lived in the rental unit for a period of time in June and some of her belongings remain in the rental unit.
- As a result I determined that AMC has no status to file a claim.
- There was an exchange of e-mails and text messages. I determined JCC gave the landlord written notice that he was terminating the tenancy agreement in June. Further, I determined based on the evidence presented that JCC made it clear to the landlord that he was not longer living in the rental unit and that he had abandoned the rental unit for living purposes in June. The landlord also made it clear to the tenant through text messages that the tenancy was ending at the end of July and that the tenant's girlfriend would have to vacate by that time.

Tenant's Application:

I determined AMC was not a tenant and as a result I dismissed all claims raised by AMC against the landlord in the tenant's Application for Dispute Resolution.

I dismissed the application by the tenant JCC to cancel the one month Notice to End Tenancy alleging the tenant has been repeatedly late paying the rent. I determined the tenant has paid the rent late on more than 3 occasions and the landlord has sufficient grounds to end the tenancy on that basis.

I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. I determined the tenant failed to pay the rent for July when due and there is no basis for cancelling the 10 day Notice to End Tenancy.

For the reasons set out below I determined that the tenancy will be coming to an end and the landlord is entitled to an Order for Possession. As a result I dismissed the tenant's application for a repair order, a reduction of rent, and an order changing the locks as those claims are moot.

I dismissed the tenant's claim for a monetary order. The tenant is not entitled to 3 months rent reimbursement for selling the house. The tenant JCC ended the tenancy and abandoned the rental unit. There is no evidence the house is being sold. The tenant is not entitled to reimbursement of \$500 for July rent on the basis of no power as the power to the house has not been disconnected. I dismissed the tenant's claim of \$800 as the tenant ended the tenancy and there is no basis for this claim. The tenant is not entitled to the return of his damage deposit given the arrears of rent that is owed. I dismissed the claim of \$500 for reimbursement of rent for June as the tenant failed to prove this claim.

In summary the claim of the tenant including the claim for reimbursement of the cost of the filing fee is dismissed.

Landlord's Claim:

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant's application to set aside the Notice to End Tenancy has been dismissed. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. **Accordingly, I granted the landlord an Order for Possession on 2 days notice.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

I determined that the tenant JCC gave the landlord notice in writing in June ending the tenancy. The law requires that the notice be a clear month notice. Thus the tenant is responsible to pay the rent for July. Further, the tenant JCC abandoned the rental property in June. **As a result I determined the tenant JCC is responsible to pay the rent for the month of July in the sum of \$1475.**

I dismissed the landlord's claim for loss of rent for August. The tenant gave notice he was ending the tenancy. The landlord seems to have accepted the notice as she texted the tenant saying that AMC would have to vacate by the end of July. JCC did not live in the rental property during July. While it is possible the landlord may have a claim against AMC for "use and occupation" as AMC acknowledged some of her belongings remain in the rental unit the landlord did not claim against her in the Application for Dispute Resolution.

The landlord claims against JCC the sum of \$4461 which represents the charge levied against the landlord under the Controlled Substance Recovery Cost. The landlord alleges the tenant is responsible as he did not change his permit to cover this property. The tenant testified that if the landlord provides him with the particulars of this charge he can change his permit and the charge can be reversed. Further, he testified the

problem related to the condition of the wiring in the house. There is a notation on the invoice that states "The fees and cost arise out of an investigation of and attendance at the above noted property by the Electrical and Fire Safety Inspection Team and are imposed under Section 8.1 and 8.2 of the Controlled Substance Property By-law 2006, Bi, 15820." I determined the landlord has failed to prove that this charge was a result of the tenant's failure to change his permit or because of the poor condition of the electrical on the property. As a result I dismissed this claim. I determined that it is appropriate to give the landlord liberty to re-apply with respect to this claim.

I dismissed the claim in the sum of \$400 for the cost of an electrician. The landlord failed to present evidence to establish this claim was a result of the tenant demanding that the electrician leave the property or because of the poor electrical system on the property.

I granted the landlord a monetary order against JCC in the sum of \$1475 plus the sum of \$50 in respect of the filing fee (reduced to reflect the limited success of the landlord) for a total of \$1525.

Security Deposit

I determined the security deposit plus interest totals the sum of \$1225. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$300.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: August 09, 2013

Residential Tenancy Branch