



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNDC, MNSD, RP, LRE, OPR, MNR, MNDC & 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 10 day Notice to End Tenancy and the one month Notice to End Tenancy were personally served on the Tenant on July 10, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated July 10, 2013?
- b. Whether the tenant is entitled to a an order cancelling the one month Notice to End Tenancy?
- c. Whether the tenant is entitled to an order recovering an additional rent increases?

- d. Whether the tenant is entitled to a monetary order and if so how much?
- e. Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit.
- f. Whether the tenant is entitled to a repair order
- g. Whether the landlord is entitled to an Order for Possession?
- h. Whether the landlord is entitled to A Monetary Order and if so how much?
- i. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- j. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties appeared before me on July 10, 2013. I ordered that the Notice to End Tenancy dated June 5, 2013 be cancelled because the landlord failed to use the approved form. I determined the rent is \$495 per month and that internet is included in the rent. Further, the tenant has made a \$125 overpayment that can be applied to future rent. I dismissed the application for an order that the landlord unseal the bedroom window. I also dismissed the application for an order suspending or setting conditions on the landlord's right to enter the rental unit, for an order allowing access to the tenant's guests and an order authorizing the tenant to change the locks.

Analysis:

A dispute arose over the payment of the rent for June and July. The tenant submitted that he gave the landlord a bank draft for the rent for those two months. The landlord testified the bank would not accept the bank draft because he was identified by a nickname. The rent had been previously paid by cash. The landlord demanded the tenant pay the arrears but the tenant failed to do so.

I determined the tenant failed to pay the rent for the months of June, July and August. In my previous decision I determined the rent was \$495 per month and internet was included as part of the rent. I further determined that the tenant had made an

overpayment of \$125 for the months of January to May and I ordered that the tenant could apply this overpayment to outstanding rent.

As a result after applying this overpayment I determined the tenant owes \$370 for June, \$495 for July and \$495 for August for a total of \$1360 remaining outstanding.

The tenant does not dispute the rent is owed. He testified that he attempted to pay the rent but the landlord refused to accept it. He admitted that he did not attempt to pay the rent after receiving the 10 day Notice to End Tenancy.

The tenant submits that he should have one month rent free as the landlord is attempting to evict him for to allow family members to move in. The landlord has not served a 2 month Notice to End Tenancy.

Tenant's Application to Cancel the 10 day Notice to End Tenancy dated July 10, 2013:

Section 26(1) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. The Notice would have been void had he paid the arrears within 5 days of receiving the 10 day Notice. The tenant chose not to do so. I determined there is no basis for cancelling the 10 day Notice to End Tenancy.

Tenant's Application to Cancel the 10 day Notice to End Tenancy dated July 10, 2013:

The landlord withdrew the one month Notice to End Tenancy. As a result I ordered that the one month Notice to End Tenancy be dismissed as cancelled.

Tenant's Application to Recover an Additional Rent Increase:

I dismissed the tenant's application to recover an additional rent increase. This issue was dealt with in the previous hearing on July 10, 2013.

Tenant's Application for a Monetary Order:

It is unclear from the Application for Dispute Resolution exactly what monetary claims the tenant is making. The Application claims \$470 but details are not set out. From the materials filed the tenant raises the following issues. With respect to each of the tenant's application for a monetary order I find as follows:

- a. I dismissed the tenant's application for a monetary order for rent overpayment of \$125. The tenant has been given credit for this overpayment as it has been applied to outstanding rent for June.
- b. I dismissed the tenant's claim for the return of his security deposit as the landlord is not required to return it until 15 days after the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. The tenancy is ongoing.
- c. I dismissed the tenant's claim that he be credited for one month free rent. The landlord did not serve a 2 month notice on the Tenant. There is no legal basis for making such an order. The basis for ending the tenancy is the failure to pay the rent.

Tenant's Application for an order suspending or setting conditions on the landlord's right to enter the rental unit.

I dismissed the above claim as the tenancy will be coming to an end and the issue is moot.

Tenant's Application for a Repair Order:

I dismissed the above claim as the tenancy will be coming to an end and the issue is moot.

Landlord's Application for an 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. 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.

Landlord's Application for a Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of June (\$370 remains outstanding), July (\$495 remains outstanding) and August (\$495 remains outstanding) and the sum of \$1360 remaining outstanding. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. **I granted the landlord a monetary order in the sum of \$1360 plus the sum of \$50 in respect of the filing fee for a total of \$1410.**

Security Deposit

I determined the security deposit plus interest totals the sum of \$250. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1160.

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 22, 2013

Residential Tenancy Branch