



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNL CNR MNDC ERP RP LRE FF

For the landlord: OPR OPB MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied to cancel a notice to end tenancy for landlord’s use of property, for unpaid rent or utilities, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to make emergency repairs for health or safety reasons, to make repairs to the unit, site or property, to suspend or set conditions on the landlord’s right to enter the rental unit, and to recover the filing fee.

The landlords applied for an order of possession for unpaid rent or utilities, due to the tenant breaching an agreement with the landlord, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the security deposit or pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The landlords and the tenant attended the hearing. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the rules of procedure, and testimony provided.

The tenant confirmed receiving the landlords’ evidence and that he had the opportunity to review that evidence prior to the hearing. The landlords confirmed that they received

a portion of the tenant's evidence, however, did not receive photographic evidence from the tenant. The tenant stated that he served the photographic evidence on September 23, 2013 by registered mail. Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed which would deem the evidence served by September 28, 2013 which is not in accordance with the Rules of the Procedure. As a result, the photographic evidence submitted by the tenant was excluded from the hearing as it was not served in accordance with the Rules of Procedure.

Preliminary and Procedural Matters

During the hearing, the parties agreed that the landlords did not issue a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") under the *Act*. As a result, the tenant requested to withdraw his request to dispute a 2 Month Notice. The tenant was permitted to withdraw that portion of his application as that would not prejudice the landlords.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstances the tenant and the landlords indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") for the tenant, and for the landlord for an order of possession and for a monetary order related to unpaid rent only. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 10 Day Notice and for the recovery of his filing fee, and the landlords' request for an order of possession and their request for unpaid rent at this proceeding. The balance of the applications for the tenant and the landlords are **dismissed, with leave to re-apply**.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Are the landlords entitled to an order of possession under the *Act*?
- Are the landlords entitled to a monetary order for unpaid rent, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy agreement began on November 1, 2012. According to the tenancy agreement, monthly rent of \$950.00 is due on the first day of each month. The parties agreed that for some months during the tenancy, rent was reduced by \$50.00 if the tenant performed approved work for the landlords. According to the landlords, rent was last reduced for the tenant in June 2013. According to the tenant, rent was last reduced for July and August 2013. The parties agreed that a security deposit of \$475.00 was paid at the start of the tenancy which the landlords continue to hold. There was a dispute regarding the pet damage deposit. The tenant claims to have paid a \$200.00 pet damage deposit. The landlords stated that the tenant failed to pay any amount of the pet damage deposit. The tenant stated that he did not have any receipts or bank statements to support that a pet damage deposit of \$200.00 was paid to the landlords.

The parties agree that a 10 Day Notice dated September 5, 2013 was served on the tenant on September 5, 2013. The tenant confirmed receiving the 10 Day Notice on September 5, 2013 and disputed the 10 Day Notice on the same day, September 5, 2013, which is within the required timeline under section 46 of the *Act*. According to the 10 Day Notice, \$950.00 was owed for September 1, 2013. The effective vacancy date on the 10 Day Notice is listed as September 15, 2013. The parties acknowledged that there were two additional 10 Day Notices for the months of July and August 2013 for rent owed for those months as well, however, the 10 Day Notice at issue is the 10 Day Notice dated September 5, 2013.

The tenant testified that he did not pay rent for September 2013 or pay rent for October 2013. The landlords testified that they are claiming \$950.00 in unpaid rent for the months of July, August, September and October of 2013. The tenant claimed that he paid \$450.00 for the months of July and August 2013 by performing work for the landlords. The landlords stated that the tenant did not perform any work towards rent for July 2013 or August 2013. The tenant stated that he did not have any evidence to support that he paid \$450.00 rent for the months of July and August 2013, or had any agreements in writing with the landlords that he could perform specific work that had a value of \$450.00 towards rent for the months of July and August of 2013.

The tenant continues to occupy the rental unit. The landlords are seeking an order of possession for unpaid rent and due to the tenant breaching the tenancy agreement, and are seeking a monetary claim of \$3,800.00 comprised of \$950.00 in unpaid rent for each of the months of July, August, September and October of 2013.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of Possession – The tenant testified under oath that rent has not paid for September 2013 or October 2013. The effective vacancy date on the 10 Day Notice is listed as September 15, 2013. The tenant continues to occupy the rental unit. Section 26 of the *Act* requires that the tenant pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the *Act*. Therefore, based on the above, **I find** the 10 Day Notice issued by the landlords dated September 5, 2013 to be **valid and is upheld** as the tenant failed to pay rent when it was due. Therefore, **I dismiss** the tenant's application to dispute the 10 Day Notice.

Pursuant to section 55 of the *Act*, **I must** grant the landlords an order of possession. Therefore, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

Landlords' claim for unpaid rent – The landlords have claimed \$3,800.00 for unpaid rent for the months of July, August, September, and October of 2013. The tenant claims he performed work in a value of \$450.00 for the months of July and August of 2013. The tenant agrees that he did not pay any rent for September and October of 2013. The tenant confirmed that he did not submit any supporting evidence that supports his testimony that he performed work approved by the landlords towards rent or that he paid any rent for July or August of 2013. Therefore, I find the tenant has provided insufficient evidence that any rent was paid for the months of July and August of 2013. Based on the above, **I find** the landlords are entitled to rent owing for the months of July, August, September and October 2013 in the amount of \$950.00 per month for a total of **\$3,800.00** in unpaid rent.

As the landlords were successful with the portion of their application that proceeded, I find the landlords are entitled to **\$50.00** of their filing fee. Given the above, I find the landlords have established a total monetary claim of **\$3,850.00**.

There was no dispute between the parties that the landlords continue to hold the tenant's security deposit of \$475.00. There was a dispute regarding payment of a pet damage deposit. The tenant claims he paid a pet damage deposit of \$200.00 at the start of the tenancy, however, failed to provide any supporting evidence such as a receipt, bank statements, witness statement or any other supporting evidence. Therefore, based on

the balance of probabilities, I find that only a security deposit of \$475.00 was paid by the tenant.

I authorize the landlords to retain the tenant's full security deposit of \$475.00 in partial satisfaction of the landlords' claim. **I grant** the landlords a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$3,375.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The portion of the tenant's application that proceeded at this hearing has been dismissed.

I grant the landlords an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I authorize the landlords to retain the tenant's full security deposit of \$475.00 in partial satisfaction of the landlords' claim. I grant the landlords a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of \$3,375.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 02, 2013

Residential Tenancy Branch

