



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OPC MNR MNDC FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied to cancel a notice to end tenancy, as well as for monetary compensation. The landlord applied for an order of possession pursuant to the notice to end tenancy, as well as for monetary compensation. At the outset of the hearing the tenant stated that he was moving out of the rental unit, and he did not oppose the landlord receiving an order of possession. I granted the order of possession and heard the monetary claims of the tenant and the landlord.

At the outset of the hearing, each party confirmed that they had received the other party's application. The tenant received the landlord's evidence.

The landlord stated that he had not received the tenant's evidence because he did not check his mailbox. The tenant stated that he served his evidence on the landlord by placing it in the landlord's mailbox on September 13, 2013. The landlord would have been deemed served with the tenant's evidence on September 16, 2013, which would be one day late. I asked the landlord if he wished to request an adjournment based on the late evidence, but the landlord wished to proceed with no adjournment. I therefore admitted the tenant's evidence.

Both parties were given full opportunity to respond to the other party's testimony. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on January 15, 2011. The tenancy agreement indicates that the monthly rent is \$875, with a \$50 discount if rent is paid on or before the first of the month. The addendum to the tenancy agreement sets out that hydro and gas are not included in the rent, and the tenants would be responsible for paying 60 percent of the utilities, and at the time of move-in the monthly installment payments were \$125 per month. The rental unit is one of four units on the property. The current landlord purchased the property and took over as landlord in April 2013. The parties agreed that in May 2013 the landlord had construction done on the rental property to build a shed located between the two lower rental units. The parties also agreed that on or about July 20, 2013 the landlord's father sprayed some chemicals on the rental property lawn without any notice being given to the tenants. The tenant has not paid rent for September 2013.

Tenant's Application

In his original application, the tenant applied for \$945 in compensation for loss of quiet enjoyment. In the tenant's evidence package he indicated that he wished to increase his monetary claim to \$5000. However, the tenant did not submit an amended application, and I therefore limit the tenant's monetary claim to \$945, as set out in his original application.

The tenant stated that the landlord continually disrupted the tenant's quiet enjoyment.

The construction on the shed between the two lower rental suites took place from the beginning of May through to the first week of June 2013, and the loud noises, including jackhammering, disturbed the tenant's infant son's nap time. The tenant stated that he informed the landlord, but the noise persisted.

The tenant stated that on July 20, 2013 the landlord's father sprayed chemicals on the rental property lawn, without any notice given to the tenants. The tenant stated that his kids and dog play on the lawn and the tenant feared the chemicals sprayed may have put them in danger.

The tenant stated that the landlord would frequently come to the rental property or drive by without any notice. On August 1, 2013 the landlord without notice showed one of the other rental units to prospective new tenants, and four of the five groups of viewers knocked on the tenant's door. That day, the tenant raised the issue with the landlord

that the landlord did not notify the tenant that he was coming by or that the other unit was being shown. The tenant stated that the landlord then tried to get the tenant to agree to move out in exchange for one month's free rent, and the tenant felt bullied by the landlord. The tenant stated he felt that the landlord would do anything to get the tenant out.

The landlord's response to the tenant's application was as follows. The landlord stated that he informed the tenant that he would be renovating the downstairs suite and building a shed. The landlord has the right to attend the rental property without notice to do work. The landlord stated that he would often drive by the rental property when he was visiting his father, who lives in the neighbourhood. The landlord stated that he did not realize that his father was going on the date he did to spray the lawn. The landlord also stated that there was nothing he could do about the prospective tenants knocking on the tenant's door.

Landlord's Application

The landlord claimed \$1140 in unpaid rent and utilities. The landlord stated that the tenant did not pay rent of \$875 or utilities of \$125 for September 2013, and the balance of \$140 represents unpaid portions of rent and utilities from previous months, as the tenant paid July utilities late, and he paid August rent and utilities late, so he was not entitled to any discount in rent.

The tenant's response to the landlord's application was as follows. The tenant believed that the landlord should have given the tenant a two-month notice to end tenancy for landlord's use, and if he had done so the tenant would have been entitled to one month's free rent, so the tenant did not pay rent or utilities for September. The tenant stated that in June he had a verbal agreement with the landlord that even though he was not paying on time, the landlord would allow the \$50 discount. The tenant stated that in regard to August rent, the tenant believed that he and the landlord were still negotiating whether the tenant would vacate in exchange for free rent. The tenant also stated that he told the current landlord that he had a verbal agreement with the former landlord, where if the tenant paid his utilities early or on time, he would receive a \$5 discount.

Analysis

Tenant's Claim

I find that the tenant did suffer some loss of quiet enjoyment when the construction and renovation work was occurring for approximately five weeks from the beginning of May through the first week of June 2013. The landlord acknowledged that the work was taking place, and I accept the tenant's submission that the noise was such that it affected his child's nap time and daily schedule. As the tenant is entitled to and pays for many amenities, not only quiet enjoyment, I find it is reasonable to award the tenant 30 percent of his rent for approximately five weeks, in the amount of \$330.

I further find that the tenant is entitled to some compensation for the lawn spraying incident, for which the landlord gave the tenant no advance notice. The landlord's father acted as the landlord's agent, whether with the landlord's full knowledge or not. The tenant had valid and reasonable concerns regarding the potentially dangerous effects of the chemicals on his children and pet, and the landlord was required under the Act to give the tenant notice of this work. I find that it is reasonable to grant the tenant \$100 in compensation regarding this incident.

I do not find that the tenant is entitled to further compensation for the times that the landlord drove by or came onto the rental property without notice, as the landlord was entitled to come onto the rental property to do work and deal with the other units, including showing the units to prospective new tenants. I do not find that the landlord "bullied" the tenant when he offered one free month's rent in exchange for the tenant vacating the unit, particularly as the tenant characterized these discussions with the landlord as "negotiations."

Landlord's Claim

I find that the landlord is entitled to \$875 in rent and \$125 in utilities for September 2013. The tenant acknowledged that he did not pay this amount, and there was no written agreement or other authority under the Act for the tenant to withhold his rent. I do not find that the landlord is entitled to the additional \$140 claimed, as the landlord did not provide a ledger or other evidence to specify when these amounts were owed.

Filing Fees

As both parties were only partially successful in their applications, I decline to award either party recovery of the filing fee for the cost of their applications.

Conclusion

I grant the landlord an order of possession effective September 30, 2013. The tenant must be served with the 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.

The landlord is entitled to \$945. The tenant is entitled to \$430. I grant the landlord an order under section 67 for the balance due of \$515. This order may be filed in the Small Claims Court and enforced as an order of that Court.

I note that the landlord continues to hold the security and pet deposits in trust and they must be dealt with in accordance with the Act.

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: September 26, 2013

Residential Tenancy Branch

