



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Group Medallion Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF, MT, CNC, CNR, MNDC, ERP, O

Introduction

There are applications filed by both parties. The Landlord has filed an application for an order of possession and a monetary order for unpaid rent and recovery of the filing fee. The Tenant has made an application to be allowed more time to make an application to cancel a notice to end tenancy and if allowed to cancel a notice to end tenancy issued for cause, to cancel a notice to end tenancy issued for unpaid rent, a monetary claim for money owed or compensation for damage or loss and an order for emergency repairs for health or safety concerns.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served.

During the hearing, the Tenant stated that he wished for emergency repairs for a gasleak that was reported to FortisBC. Both parties confirmed that after the gas leak was reported that it has already been fixed. As such, no further action is required.

During the hearing, the Tenant provided an alternate address for delivery of this decision. As such, this file shall be updated with the new primary mailing address.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

Is the Tenant entitled to more time to be allowed to cancel a notice to end tenancy? If so, Is the Tenant entitled to an order cancelling a notice to end tenancy issued for cause?

Is the Tenant entitled to an order cancelling a notice to end tenancy issued for unpaid rent?

Is the Tenant entitled to a monetary order?

Background and Evidence

This Tenancy began on May 20, 2013 on a fixed term tenancy until May 31, 2014 as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$750.00 payable on the 1st of each month. A \$375.00 security deposit was paid on May 20, 2013.

Both parties confirmed that a 1 month notice to end tenancy issued for cause dated August 10, 2013 was served upon the Tenant by the Landlord on August 10, 2013. The notice states an effective date of September 10, 2013. The notice also states two reasons for cause:

Tenant has engaged in illegal activity that has, or is likely to:

- Damage the landlord's property.
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The Tenant seeks an order allowing him more time to make an application to cancel a notice to end tenancy issued for cause dated August 10, 2013. The Tenant states that he thought he applied on time indicating that he signed the application on August 23, 2013. The Tenant clarified that he had received the notice to end tenancy issued for cause dated August 10, 2013 on August 13, 2013. The Tenant states that he, "doesn't know why" he filed late as he thought it was done on time.

As for the Landlord's monetary claim for unpaid rent, the Tenant has confirmed in his direct testimony that no rent was paid for September or October 2013 and that he is still occupying the rental. The Tenant stated that he was withholding rent because he felt that he was owed compensation from the Landlord. The Landlord has confirmed that she disputes the Tenant's claims and did not give any permission to withhold rent. The Landlord seeks a monetary claim for \$1,500.00 for unpaid rent for the months of September and October 2013.

The Tenant seeks a monetary order for compensation of \$3,190.60. This consists of \$85.00 for the cost of buying a portable heater, \$1,230.60 for the loss of use of a bedroom for approximately 3 ½ months, \$750.00 for the loss of heat for a month, \$375.00 not having a stove for 1 month and \$750.00 for the loss of quiet enjoyment. The Tenant states that since he moved into the rental unit on May 22, 2013 he lost the use of a bedroom because of a gas leak. The Tenant states that he reported it to the

Landlord at the beginning of the Tenancy and that the Landlord failed to act. The Landlord disputes this stating that she was informed of a possible gas leak, but was told by the Tenant that he was not that concerned as he has purchased a heater. The Tenant also seeks reimbursement of \$85.00 for the cost of portable heater because he had no heat during the month of August 2013. The Tenant stated that he notified the Landlord that there was no heat on August 2, 2013, but that the Landlord failed to take any action to deal with the issue. The Tenant also stated that it was very cold at night in August. The Tenant called a witness, E.A. his girlfriend who lives with him, who stated that it was very cold and averaged about 15 degrees Celsius. The Landlord disputes the Tenant's claim stating that the gas for the furnace was turned off to conserve costs as it is a summer month. The Landlord also stated that the witness, E.A. was not noted as a legal occupant of the rental unit. The Landlord stated that an online search of August temperatures for August 2013 stated that the average lowest temperature was 10.4 degrees Celsius. The Landlord stated that the Tenant fail to inform the Landlord that he was cold and could have turned on the heat if so requested. The Tenant also seeks \$1,230.60 for the loss of use of the bedroom from May 22, 2013 for approximately 3 ½ months. The Tenant seeks a monetary claim of \$750.00 for the loss of heat. The Tenant stated that this was for not having heat for approximately 1 month and that the claim was based upon a "guessed number". The Tenant seeks compensation of \$375.00 for the inconvenience of not having a stove from May 22, 2013 to June 17, 2013. The Landlord confirmed that upon being notified at the beginning of the tenancy the stove was replaced, but that the delay was because of scheduling problems with another tenant. The Tenant's claim is based upon a "guessed number". The Tenant seeks a claim of \$750.00 for the loss of quiet enjoyment because of the construction for a broken pipe in the wall. The Tenant states that it was very inconvenient and that the Landlord failed to clean up after the work was done. The Landlord disputes this claim stating that the contractor did clean up after themselves, but that work was done at odd late hours to complete the job as quickly as possible to avoid further delays and inconveniences to the Tenant.

Analysis

Residential Tenancy Branch Policy Guideline # 36 speaks to "Extending a Time Period," and provides in part as follows:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the

party putting forward said “reason” must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered “exceptional” circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

I find that the tenant has failed to meet the burden of proving there were exceptional reasons giving rise to their late application to dispute the 1 month notice. Accordingly, the tenants’ application for more time to make an application to dispute the notice is hereby dismissed. As the Tenant has failed to properly make an application for dispute, the Tenant is conclusively presumed to have accepted that the Tenancy is at an end. The Landlord has reiterated that she seeks an end to the Tenancy. As such, the Landlord is granted an order of possession. I note that the 1 month notice to end tenancy dated August 10, 2013 showed an effective date of September 10, 2013. The Act states that the effective date of the notice is automatically corrected for 1 month from the date that rent is due. As such, the corrected effective date is September 30, 2013. The Landlord is granted an order of possession. This order must be served upon the Tenant. 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.

Although possession has been decided upon based upon the Tenant’s lack of action to file an application for dispute resolution, I also note that the Tenant confirmed in his direct testimony that rent was withheld without permission of the Landlord or the Residential Tenancy Branch.

I find based upon the undisputed testimony of both parties that the Landlord has established a claim for unpaid rent of \$1,500.00 for the months September and October of 2013. The Landlord is also entitled to recovery of the \$50.00 filing fee.

I find that the Tenant’s monetary claim for \$3,190.00 for money owed or compensation for damage or loss has failed. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant has failed to provide sufficient evidence that damage or a loss occurred due to the neglect or inaction of the Landlord. The Tenant has also failed to provide sufficient evidence of an actual cost for compensation other than it was a “guessed number” or that the Tenant took any reasonable steps to mitigate any possible loss or damage. As well, the Tenant failed to obtain permission from the Landlord for the purchase of a heater much less provide sufficient evidence that the Landlord was notified of the heating problem and that it was required for August 2013. However, I find based upon the Landlord’s direct testimony that the Tenant did suffer an inconvenience causing him to not have stove for approximately a 1 month period and is entitled to a nominal award of \$150.00 equal to \$5.00 per day for a 30 day period.

In offsetting these claims, I find that the Landlord has established a total monetary claim of \$1,550.00 and the Tenant, \$150.00. The Landlord is granted a monetary order for the balance due of \$1,400.00.

Conclusion

The Landlord is granted an order of possession.

The Landlord is granted a monetary order for \$1,400.00.

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: October 08, 2013

Residential Tenancy Branch

