



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes:

Tenant's application (filed September 22, 2013): CNC, CNR, MNDC, OLC, FF

Landlords' application (filed October 22, 2013): OPR, MNR; MNDC; MNSD; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to cancel a Notice to End Tenancy for Cause; to cancel a Notice to End Tenancy for Unpaid Rent; compensation for damage or loss under the Act, regulation or tenancy agreement; an Order that the Landlord comply with the Act; and to recover the cost of the filing fee from the Landlord.

The Landlords seek an Order of Possession for Unpaid Rent; a Monetary Order for unpaid rent and damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord BM and the Tenant gave affirmed testimony at the Hearing.

The Tenant testified that he sent his Notice of Hearing documents by registered mail to the Landlord. The Tenant did not file any documentary evidence.

The Landlord BM testified that he sent the Landlords' Notice of Hearing documents and copies of the Landlords' documentary evidence by registered mail sent October 24, 2013. He gave the tracking numbers for the registered documents.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to the monetary awards sought in his application?
- Is the Tenant entitled to compensation and aggravated damages?

Background and Evidence

July 31, 2013, the parties signed a tenancy agreement, a copy of which was provided in evidence by the Landlords. The term of the lease was July 15, 2013 to August 31, 2014. Monthly rent is \$1,500.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$750.00.

The Landlord BM testified that the Tenant owes rent, calculated as follows:

Unpaid rent for September, 2013	\$1,500.00
Unpaid rent for October, 2013	\$1,500.00
Less cash payment October 2, 2013	-\$500.00
Less cash payment mid-October, 2013	-\$500.00
Unpaid rent for November, 2013	<u>\$1,500.00</u>
TOTAL	\$3,500.00

BM testified that he served the Tenant with the Notice to End Tenancy for Unpaid Rent by posting it to the Tenant's door at the rental unit on September 22, 2013, with a witness. The Landlords provided a copy of the Notice, dated September 21, 2013, in evidence.

BM testified that the Strata Corporation has fined him and his wife for the Tenant's breach of the Strata Bylaws. He stated that the Tenant was throwing garbage (onions, oysters, etc.) from his balcony had an unauthorized air conditioning unit set up in his window, which dripped on to the windows below. The Landlords provided a copy of a fine statement dated September 25, 2013 in evidence. The statement indicates the following charges for the rental unit:

August 8, 2013 by-law fine – air conditioner drip	\$200.00
August 8, 2013 by-law fine – items off balcony	\$200.00
September 23, 2013 (cost of cleaning windows from drip)	<u>\$420.00</u>
TOTAL	\$820.00

The Tenant testified that the Landlord "cut off my fob and phone" and that he could not get into the rental unit for a month. The Tenant stated that he tried to pay the Landlord the rent that he owed, but the Landlord would not answer his calls.

The Tenant testified that he paid his rent in cash, on the first of every month. He stated that he would meet the Landlord BM or his agent in Coquitlam to pay the rent. The Tenant submitted that he only owed \$500.00 in rent and that he could prove it. He

stated that November's rent was not due until the end of the day, so he was not in arrears for November.

Later in the Hearing, the Tenant stated that he didn't owe any rent and that he had receipts that would prove that he had paid the rent. He submitted that he didn't owe any rent because he didn't have access to the rental unit for a month.

BM stated that the Tenant paid rent by depositing it directly into his account. He stated that he could also produce statements to show that the Tenant was in arrears.

The Tenant denied throwing any garbage of his balcony. He stated that he only had the air conditioner installed for one day.

Analysis

I explained to the Tenant that rent **must** be paid when it is due, whether or not the Landlord complied with the Act, regulation or tenancy agreement, unless the Tenant had an Order from the Director allowing him to deduct rent. The Tenant did not have such an Order. Therefore, I find that the Tenant is in arrears of rent.

I find that the Tenant received the Notice to End Tenancy on or before September 24, 2013, the day that he filed his application to cancel the Notice. Therefore, I find that the tenancy ended 10 days afterwards, on October 4, 2013. I find that the Tenant is overholding and that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

I have granted the Landlords' application for an Order of Possession for unpaid rent. The tenancy is over and therefore there is no need to consider the Tenant's application to cancel the Notice to End Tenancy for Cause.

The Tenant's application to cancel both of the Notices to End Tenancy is dismissed.

Both parties insisted that they had documentary proof with respect to payments that the Tenant made towards rent. Neither party had provided the documents to the Residential Tenancy Branch, or to each other. I am satisfied that the Tenant owes rent, however I am not satisfied with respect to the amount owed. **Therefore, I ordered both parties to provide me with the original documents immediately and to serve the other party with copies. No further documentary evidence will be accepted by either party.**

The balance of the parties' claims is adjourned to the date and time provided in the enclosed Notice of Reconvened Hearing. Neither party is required to serve the other with this Notice of Reconvened Hearing.

Conclusion

The Tenant's application to cancel the Notices to End Tenancy for Unpaid Rent and for Cause is dismissed. The remainder of the Tenant's application is adjourned to the date and time provided on the enclosed Notice of Reconvened Hearing.

The Landlords' application for an Order of Possession is granted. The remainder of the Landlords' application is adjourned to the date and time provided on the enclosed Notice of Reconvened Hearing.

I hereby provide the Landlords an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This interim 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: November 04, 2013

Residential Tenancy Branch

