



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR, MNR, MNSD, MNDC, FF
Tenant: CNC, CNR, OLC

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order. The tenant sought to cancel two notices to end tenancy and an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by both landlords the tenant and his witness.

At the outset of the hearing the tenant testified that he was moving out and that he was no longer wanted to cancel the notice to end tenancy. As such, I dismiss his Application and find the landlord is entitled to an order of possession pursuant to Section 55 of the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent; for all or part of the security and pet damage deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlords submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on March 21, 2013 for a month to month tenancy beginning on April 1, 2013 for a monthly rent of \$750.00 due on the 1st of each month with a security deposit of \$412.50 and a pet

damage deposit of \$100.00 paid. The agreement also stipulates that the tenant must pay the landlord 40% of hydro costs and 30% of water utility costs;

- A copy of a letter from the landlords to the tenant dated October 1, 2013 stating that it is the tenant's "10 day eviction notice" The landlord gave four reasons in the letter to end the tenancy as follows:
 - Overdue rent and utilities in the amount of \$1,459.73
 - Smoking in the residential building;
 - Noise complaints of loud music after 11:30 p.m.; and
 - A police complaint regarding a threat with a weapon made by the tenant on another tenant in the residential property.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 16, 2013 with an effective vacancy date of October 26, 2013 citing the tenant had failed to pay rent in the amount of \$1,300.00 and utilities in the amount of \$159.73.

The landlords submit that the tenant failed to pay the full rent for the month of September, 2013. The landlords state the tenant paid the landlords \$200.00 because his daughter had a dental emergency and that he would pay the landlords the balance of \$550.00 later in the month.

The tenant submits that he paid the male landlord \$750.00 at the start of September 2013. The tenant submits that he paid the landlord cash and despite providing receipts for the first couple of months of the tenancy the landlords do not now usually provide receipts.

The tenant's witness testified that she saw the tenant count out \$750.00 at the kitchen table and then go to the door and pay the landlord that amount. The landlords submit that the tenant had stepped outside and that there is no way the witness could have seen how much the tenant paid the landlord.

The landlords testified they do provide receipts but that they did not give one in September because he was waiting until the tenant paid the full rent and he would have issued one at that time.

The landlords also submit that the tenant has not paid rent for October 2013 or November 2013. The tenant submits that he was hesitant to pay rent for October because the landlords were saying that he had not paid full rent for September 2013. He states that he had the money in cash but that his rental unit was broken into and his cash was taken.

The tenant states he has reported this police and he is waiting for information from the police that he can take to his income assistance worker to get additional monies for rent for October 2013. The tenant states that he hasn't paid rent for November 2013 because he is moving out and he felt the landlords could take his deposits for the rent owed.

The landlords also seek \$159.73 for utilities that have remained unpaid since August 23, 2013. The parties agree the landlords provided the tenant with a bill for this amount. The tenant states his daughter ripped up the bill and he needed another copy to take to his income assistance worker but the landlords would not provide him with a copy of the bill. The tenant does not dispute the amount owed.

Analysis

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Based on the testimony of both parties I find the tenant has failed to pay rent for the months of October and November 2013. Despite his explanations, a tenant does not have any authority to withhold any rent payments from his landlords unless stipulated in the *Act* or by order of a Residential Tenancy Branch arbitrator. Therefore I find the landlord is entitled to rent in the amount of \$1,500.00 for these two months.

In addition and based on the tenant's own testimony I find the tenant owes the landlords \$159.73 for utilities.

As to the rent for the month of September 2013 the burden rests with the landlords to provide sufficient evidence that tenant failed to pay the amount of rent claimed. As the tenant disputes that he failed to pay rent in full, it is incumbent upon the landlord to provide sufficient evidence that the tenant failed to pay rent.

Receipts in business transactions are usually issued when a payment is received by one of the parties from the other party for the amount paid. By failing to issue the tenant a receipt for the amount the landlords submit the tenant paid at the start of September I find the landlords have no documentary or corroborating evidence to support their claim for the non-payment of rent for September and I dismiss this portion of their Application.

Conclusion

I find the landlords are entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,709.73** comprised of \$1,500.00 rent owed; \$159.73 utilities owed; and the \$50.00 fee paid by the landlords for this application.

I order the landlords may deduct the security deposit and pet damage deposit held in the amount of \$512.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,197.73**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 18, 2013

Residential Tenancy Branch

