



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR; MNR, MNSD, MNDC, FF
Tenant: MT; DRI, CNR, MNR, RR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought more time to apply to cancel a notice to end tenancy; to cancel a notice to end tenancy; to dispute an additional rent increase; and a monetary order.

The hearing was conducted via teleconference and was attended by one of the landlords and their agent. The hearing concluded ½ hour after starting and the tenant did not attend at all.

As this hearing was originally set for the tenant's Application and because the landlord's Application dealt with the same issues including a notice to end tenancy I find the tenant was sufficiently served with notice of this hearing, pursuant to Section 71 of the *Residential Tenancy Act (Act)*.

At the outset of the hearing I clarified with the landlord and the agent that the agent was named on the landlord's Application for Dispute Resolution and that the tenant had named the landlords as identified in the tenancy agreement. As the parties both named different landlords I accept the parties to this dispute to be those named in the tenancy agreement and I have amended the landlord's Application to reflect the landlord's name and not the agent's name.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled more time to apply to cancel a notice to end tenancy; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to cancel an additional rent increase; to a monetary order for emergency repairs; for an order

reducing rent; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 42, 43, 46, 65, 66, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on October 24, 2012 for a month to month tenancy beginning on November 4, 2012 for a monthly rent of \$625.00 due on the 1st of each month with a security deposit of \$312.50 paid;
- A copy of an addendum to the tenancy agreement signed on November 4, 2012 stipulating that the rent would be \$625.00 if the tenant took responsibility for certain maintenance tasks on the residential property. It goes on to state that without these responsibilities the rent would be \$800.00 and that if the conditions were unsatisfactory to the tenant; landlords or their agents "discussion around the terms can be initiated by any of the people involved;
- A copy of an email from the landlord's agent to the tenant dated May 12, 2013 regarding a number of issues but specifically to inform the tenant that: "...the arrangement of reduced rent in exchange for yard work and cleaning is no longer available: beginning with the month of July, rent.....will be the full \$800/month as described in the amendment to the rental agreement; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord's agent on October 10, 2013 with an effective vacancy date of October 20, 2013 resulting from \$800.00 in unpaid rent.

The landlord's agent testified the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent on October 10, 2013 personally. I note that the tenant had applied to dispute the notice on October 16, 2013 or 6 days after receiving the Notice.

The landlord's agent testified that the tenant had been paying the full rent of \$800.00 since July 2013 and that he had never once called it an additional rent increase until he was served with the 10 Day Notice to End Tenancy.

The landlord submits that the tenant has failed to pay any rent for the months of October and November 2013 and seeks a monetary order in the amount of \$1,600.00.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

As the tenant did not apply to dispute the Notice to End Tenancy until 6 days after receiving it and failed to attend this hearing and identify why he should have been granted additional time to submit his Application I find these actions have the same effect as if he had not applied at all to dispute the notice. I therefore find the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit.

In regard to the landlord's monetary claim I note that the tenancy agreement signed by the parties on October 24, 2012 stipulates the rent is \$625.00 and it is the addendum signed several days later that states the rent is actually \$800.00 and that it will be reduced in exchange for services provided by the tenant. I also note that the agreement stipulates not that rent will be increased to \$800.00 if the terms are not met but rather that the parties would enter into a discussion about the terms.

I find the terms of the addendum to be unenforceable because they specifically contradict the tenancy agreement that states that rent is \$625.00. In addition, I find these terms are inconsistent with the provisions of the *Act* relating to increasing rent amounts, specifically Part 3 Sections 42 and 43.

Residential Tenancy Policy Guideline 37 states that a tenant may agree to a rent increase that is greater than the allowable increase, in writing. However the guideline goes on to caution that the payment of rent in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

Despite the landlord's testimony that the tenant did not identify this as a rent increase until he was served with notice of this hearing I find that landlord does not have a written agreement with the tenant that specifically agrees to his rent being increased effective July 1, 2013.

Further, Guideline 37 stipulates, as does Section 42 of the *Act*, that regardless of any agreement on the amount of an increase in excess of the annual allowable amount a landlord cannot increase the rent within the first 12 months of the tenancy and without a 3 month notice of the increase in the approved form.

From the evidence before me the landlord's agent informed the tenant by email on May 12, 2013 that the rent would increase on July 1, 2013. As such, I find the increase

began within the first 12 months of the tenancy and without 3 month's notice in the approved form.

For these reasons I find the amount of rent in this tenancy at the time of this hearing was \$625.00 per month. I also find, based on the undisputed testimony of the landlord's agent that the tenant has failed to pay rent for the months of October and November 2013.

As such, the landlord is entitled to compensation in the amount of \$1,250.00 less any previous rent overpayments for the months of July, August, and September 2013. As per the landlord's agent's testimony this amounts to \$175.00 per month for those 3 months or a total overpayment of \$525.00.

Conclusion

As the tenant failed to attend this hearing or present any evidence in support of his claims I dismiss his Application in its entirety without leave to reapply.

I find the landlord is 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 **\$775.00** comprised of \$1,250.00 rent owed and the \$50.00 fee paid by the landlord for this application less \$525.00 of rental overpayment.

I order the landlord may deduct the security deposit and interest held in the amount of \$312.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$462.50**.

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 27, 2013

