



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of a representative of the applicant and the agent for the respondent. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was served on the Tenant by posting on August 20, 2013. The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenant by mailing, by registered mail to where the Tenant resides on October 8, 2013. The package was returned to the landlord. The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to pick up their registered mail.. With respect to each of the applicant's claims I find as follows:

Preliminary Matter:

The parties originally signed a document agreeing to adjourn the matter to the next available date and they faxed it to the Residential Tenancy Branch. The Branch would not adjourn the matter (presumably because they received the request too late). The landlord contacted the Branch on the morning of the hearing and was advised by the Branch that the hearing would be proceeding. The landlord left a message on the

tenant's door two hours ago prior to the hearing. The representative of the tenant requested an adjournment. After hearing a brief summary of the case I determined it would not be in the best interest of both parties to grant an adjournment and I determined it was appropriate to proceed.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on December 1, 2011. The rent is \$750 per month payable on the first day of each month. The tenant paid a security deposit of \$395 at the start of the tenancy.

The landlord served a one month Notice to End Tenancy on August 20, 2013 by posting. The one month Notice to End Tenancy alleges the tenant is repeatedly late paying the rent. On September 26, 2013 the tenant paid all of the rent that is owed and the landlord accepted the payment without qualification.

The tenant withheld the payment of rent for the months of October and November alleging the landlord failed to make required repairs. The representative of the tenant testified he will ensure the arrears of rent for those months October and November will be paid by November 18, 2013.

Analysis

At the end of the hearing I advised the party of my determination with regard to the landlord's application for an Order for Possession and I reserved my decision on the landlord's application for a monetary order.

Order for Possession:

I dismissed the landlord's application for an Order for Possession. The landlord served a one month Notice to End Tenancy dated August 20, 2013 and setting the end of tenancy for September 30, 2013. On September 26, 2013 the tenant paid all of the arrears and the landlord accepted the payment without condition. In a situation such as this where there is a rent payment, the landlord had the choice of accepting the payment "for use and occupation only" or accepting the payment unconditionally. Had the landlord accepted the payment for "use and occupation only" the tenancy would come to an end on September 30, 2013. However, by accepting the payment unconditionally the landlord has reinstated the tenancy and it is no longer possible for the landlord to rely on the one month Notice to End Tenancy as a basis for ending the tenancy.

The tenant has withheld the rent for the months on October and November and the sum of \$1500 is due and owing. The tenant alleged the landlord has failed to make repairs as previously ordered and as required by a City of Vancouver inspector. The tenant does not have the right to withhold the rent in circumstances such as this unless he has first obtained an order from an arbitrator to do so. Section 26(1) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord has the right to serve a 10 day Notice to End Tenancy for non-payment of rent. The representative of the tenant testified the arrears will be paid on Monday, November 18, 2013. If the outstanding rent is paid within 5 days of service the 10 day Notice to End Tenancy will be void and of no force and affect. If the tenant makes a further late payment of rent that is not authorized by an arbitrator, the landlord has the right to serve a one month Notice to End Tenancy on the grounds of repeated late payment of rent and relying on all late payments.

The representative of the tenant alleged the landlord has failed to make repairs and submits the rent should be reduced. The tenant must file an Application for Dispute Resolution to have that issue determined.

Analysis - Monetary Order and Cost of Filing fee

The tenant has failed to pay the rent for October and November and the sum of \$1500 remains outstanding. The tenant has not obtained an order for an arbitrator to withhold rent and has not complied with section 26(1) of the Residential Tenancy Act. I determined the landlord is entitled to a monetary order for this amount. **I granted the landlord a monetary order in the sum of \$1500 plus \$25 for the cost of the filing fee (reduced to reflect the partial success of the landlord) for a total of \$1525.**

The representative of the tenant stated he would ensure the arrears of rent would be paid by November 18, 2013. Any payment made by the tenant is to be applied against this order and reduce the amount outstanding accordingly.

Security Deposit

The representative of the tenant stated the arrears would be paid on November 18, 2013. I determined it was not appropriate to make an order about the security deposit as it appears the tenancy will be ongoing

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and 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 15, 2013

Residential Tenancy Branch

