



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: OPR, MNR, MNSD, FF
TENANT: CNR, RR

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy and for a rent reduction.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail November 6, 2013 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on November 18, 2013 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

At the start of the conference call the Tenant said he had moved out of the rental unit of December 20, 2013 and would be returning the keys to the Landlord by mail today. As a result of this information the Landlord said he is withdrawing his application for an Order of Possession.

As well the Tenant said that because he has moved out his application to Cancel the Notice to End Tenancy and for a rent reduction is no longer applicable. The Tenant said he still wants to dispute the Landlord's rent claims.

As the Tenant has ended the tenancy the Tenant's application is cancelled.

Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?

2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to retain the Tenant's security deposit?

Background and Evidence

This tenancy started on October 1, 2011 as a month to month tenancy. Rent is \$650.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$325 on June 29, 2012. Both parties agreed there was no written tenancy agreement, but they had a verbal agreement on the terms of the tenancy.

The Landlord said that the Tenant did not pay rent of \$650.00 for the months of October, 2013 and November 2013, when it was due and as a result, on November 4, 2013, he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated November 4, 2013 to the door of the Tenant's rental unit. The Landlord continued to say that the Tenant has unpaid rent for December, 2013 of \$650.00 as well.

The Landlord also said he is seeking to recover the \$50.00 filing fee for this proceeding. The Landlord said his total claim is for \$1,950.00 in unpaid rent and the \$50.00 filing fee for a total claim of \$2,000.00.

The Tenant said he agrees that he did not pay the rent for October, November and December, 2013. The Tenant continued to say that he has done work for the Landlord which he has not been paid for and the Landlord has not repaired many items that he said he would. As a result the Tenant said he does not believe that he owes the Landlord any rent. The Tenant did not provide any written evidence for the unpaid work or for the repairs that the Landlord said he would have done.

The Tenant's support person C.S. said the Landlord just wanted the Tenant out of the rental unit so that the Landlord could increase the rent. Both the Tenant and C.S. said the Landlord was not truthful with them during the tenancies that they had with the Landlord.

The Tenant also said that the Landlord should pay for part of his moving costs and the rental of his new rental unit, because he did not want to move and now he has paid double rent for two places.

Analysis

Section 26 (1) of the Act says 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

I find that the Tenant has not paid the overdue rent and the Tenant does not have the right to withhold a part or all of the unpaid rent. Consequently, I dismiss the Tenant's application as he agrees that he has unpaid rent.

I accept the Landlords' testimony and evidence that there is unpaid rent in the amount of \$650.00 for October, 2013, \$650.00 for November, 2013 and \$650.00 for December, 2013 totally \$1,950.00. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$1,950.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$1,950.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,000.00
Less:	Security Deposit	\$325.00	
	Subtotal:		\$ 325.00
	Balance Owing		\$1,675.00

Conclusion

A Monetary Order in the amount of \$1,675.00 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: December 30, 2013

Residential Tenancy Branch