



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, MNDC, RR

Introduction

There are applications filed by both parties. The Landlord seeks an order of possession and a monetary order for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee. The Tenant seeks a monetary order for money owed or compensation for damage or loss, an order to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

During the hearing, the Tenant requested an adjournment to submit his documentary evidence. The Tenant explained that he has been stressed out and unable to provide his documents for this hearing. The Tenant stated that he was not aware that he was responsible for submitting his evidence on time or to have his witness available for the dispute hearing and that he did not read the hearing letter that he has confirmed receiving. The Landlord objected to the adjournment. The Tenant's request for an adjournment is denied. I find that the Landlord cannot be penalized for the Tenant's actions in not being prepared for his own application. The Tenant has failed to provide sufficient grounds to warrant a delay in the form of an adjournment.

During the hearing both parties amended their applications. The Landlord amended their application to increase the amount from \$1,900.00 to \$2,727.00 for the continuation of unpaid rent from December 2013 to the date of this hearing. The Tenant has also amended his monetary claim from \$4,800.00 to \$4,200.00. The Tenant has withdrawn his request for the remaining portion of the claim for lost wages/energy bills. The Tenant has also withdrawn his claim for a reduction in rent as he intends to vacate the rental unit. Neither party objected to the amendments.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?
Is the Landlord entitled to a monetary order?
Is the Landlord entitled to retain the security deposit?
Is the Tenant entitled to a monetary order?

Background and Evidence

This tenancy began on June 1, 2011 on a fixed term tenancy until November 30, 2012 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$1,400.00 payable on the 1st of each month. A security deposit of \$700.00 was paid on May 21, 2011.

The Landlord states that the Tenant was served with a 10 day notice to end tenancy issued of unpaid rent dated December 22, 2013 on the same date in person. The notice states that the Tenant failed to pay rent of \$500.00 that was due on December 1, 2013 and displays an effective end of tenancy date of January 1, 2013. The Tenant confirmed this in his direct testimony. The Landlord states that as of the date of this hearing the Tenant owes \$2,727.00 in unpaid rent. The Tenant confirmed this amount of owed rent in his direct testimony. Both parties agreed that a late and only payment of \$500.00 was made in January of 2014 on either the 23rd or 24th.

The Landlord seeks an order of possession and a monetary order for \$2,727.00 for unpaid rent.

The Tenant states that the Landlord has harassed and threatened him over a 3 month period and seeks a monetary order for compensation in the amount of \$4,200.00 (equal to 3 months rent for December, January and February). The Tenant states that the Landlord or his agents have made repeated threatening phone calls and emails to him for the payment of rent. The Tenant states that the Landlord has even called his employer threatening him. The Landlord disputes this. The Tenant states that he has emails proving that the Landlord was making threats against him. The Tenant states that he called the police and was told that they could do nothing as this was a Residential Tenancy matter and not a Criminal matter. No action was taken by the police. The Tenant states that the amount claimed is an arbitrary one selected and that he has not suffered a loss or any costs were incurred. The Landlord disputes the claims made by the Tenant. The Landlord states that no calls or threats were made, only repeated requests for the payment of rent arrears.

Analysis

I find based upon the undisputed testimony of both parties that the Landlord did serve the Tenant with the 10 day notice to end tenancy issued for unpaid rent. The Tenant stated in his direct testimony that he did receive the notice and did not pay the amount owed within 5 days nor did he apply for dispute resolution to dispute the amount. Both parties confirmed that the Tenant later made a payment of \$500.00 during January 2014 for which a receipt was issued for use and occupancy only. The Landlord has established grounds for an order of possession for unpaid rent. The Landlord is granted an order of possession. The Tenant must be served with the order. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary claim made by the Landlord, I find based upon the documentary evidence of the Landlord and the undisputed testimony of both parties that the Tenant has failed to pay the rent owed of \$2,727.00 as amended by the Landlord. The Landlord is successful in establishing a monetary claim of \$2,727.00. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$700 security deposit in partial satisfaction of the claim and I grant the Landlord a monetary order under section 67 for the balance due of \$2,077.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I find on a balance of probabilities that the Tenant has failed to establish a claim for the amount claimed of \$4,200.00. The Tenant has made allegations of threats for the payment of rent over a 3 month period that he states resulted in the loss of quiet enjoyment for which he suffered stress and fear for his safety. The Landlord has confirmed in her direct testimony that requests were made for payment of the unpaid rent, but that no threats were made. Without further evidence to support his position, I find that the Tenant has failed to provide sufficient evidence of the claim. The Tenant's monetary claim is dismissed.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$2,077.00. The Tenant's application is dismissed.

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: March 11, 2014

Residential Tenancy Branch

