



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR, RP, RR, FF

For the landlord: OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened as a result of and to deal with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), an order requiring the landlord to make repairs to the rental unit, for an order allowing a reduction in rent, and for recovery of the filing fee.

The landlord applied for an order of possession for the rental unit due to alleged cause and unpaid rent, a monetary order for unpaid rent and for money owed or compensation for damage or loss, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, respond each to the other's evidence, and make submissions to me.

At the outset of the hearing, both parties acknowledged receipt of the other's application and neither party raised any issues regarding service of the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Matter #1-At the beginning of the hearing, I was informed that the landlord had also filed an application for dispute resolution, which was not before me; however, I was able to print the application and evidence and the landlord supported his documentary evidence through his testimony. I assured the landlord I would not issue a Decision until I had obtained the hearing file for his application package. After the hearing, I did obtain the file.

Preliminary matter #2-I have determined that the portion of the tenant's application dealing with a request for monetary compensation, a reduction in rent and for an order requiring the landlord to make repairs are unrelated to the primary issue of disputing the Notice and whether or not this tenancy will continue. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dealt only with the portion of the tenant's application dealing with the Notice. The remaining portion of the tenant's application will be dealt with after a determination as to whether or not this tenancy continues, as will be addressed later in this Decision.

The hearing proceeded only upon the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the landlord's application seeking an order of possession for the rental unit and monetary compensation for unpaid rent.

Preliminary matter #3-The landlord, in his application, applied seeking enforcement of a 1 Month Notice to End Tenancy for Cause; however the landlord did not submit a copy of such Notice nor did he refer to the Notice in the hearing. I therefore have amended his application, excluding such a request.

Preliminary matter #4-The tenant telefaxed approximately 8 pages of documentary evidence after the hearing; however I have not considered this evidence as I did not request it and the tenant failed to submit the evidence prior to the hearing and serve the landlord with a duplicate copy.

Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and recovery of the filing fee?
2. Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, for authority to retain the tenant's security deposit and monetary compensation, including recovery of the filing fee?

Background and Evidence

The undisputed evidence from the parties shows that this tenancy began on May 1, 2013, monthly rent is \$1200, and the tenant paid a security deposit of \$600 at the beginning of the tenancy.

The rental unit is in the upper portion of a home owned by the landlord, who also rents the lower portion to other tenants.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing to explain or support the 10 Day Notice to End Tenancy.

The landlord submitted that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 2, 2014, by placing the document in the tenant's

mailbox, listing unpaid rent of \$3440 as of January 1, 2014. The effective move-out date listed was January 12, 2014.

The landlord asserted that since the issuance of the Notice, the tenant has not made any further rent payments, and owes the amount of \$4640 in total unpaid rent through the date of the hearing, including February 2014. The landlord's monetary claim was in the amount of \$4640, comprised of unpaid rent of \$1040 for November 2013, \$1200 for December 2013, \$1200 for January 2014, and \$1200 for February 2014.

In response, the tenant confirmed no further payments of rent; however the tenant claimed that he had been deprived of essential services as the landlord failed to address repair requests, including a loss of heat and a water drain backup, leaving feces inside the rental unit.

The tenant claimed that he notified the landlord of his repair requests, and the landlord failed to address or correct any problem.

The tenant further claimed that he had been paying the utility bills for both his rental unit and the lower rental unit, as the landlord required the bills to be put in the tenant's name.

Analysis

Landlord's Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice within five days; however when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, I find the landlord submitted sufficient evidence that the tenant owed the landlord rent when the Notice was issued and that the tenant did not pay all or any of the rent owed to the landlord within five days of receiving the Notice.

I also considered that the tenant submitted no evidence that he had a legal right to withhold rent, as the issues he brought forth do not meet the criteria and they were not dealt with as and when they occurred, with a separate application for dispute resolution prior to receiving a 10 Day Notice.

Therefore, I find the tenancy has ended due to the tenant's failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenant.

I find the landlord submitted sufficient evidence that the tenant owes the amount of \$4640 for unpaid rent through February 2014.

I therefore find that the landlord is entitled to a monetary award in the amount of \$4690, comprised of outstanding rent of \$4640 through February 2014, and the \$50 filing fee paid by the landlord for this application.

Tenant's application:

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the 10 Day Notice to End Tenancy issued by the landlord has been supported by the landlord and is therefore valid and enforceable.

As I have granted the landlord an order of possession for the rental unit, meaning the tenancy will be ending, I dismiss the portion of the tenant's application seeking a reduction in rent and for an order requiring the landlord to make repairs.

As to the tenant's claim for a monetary order or compensation, I dismiss that portion of his application, **with leave to reapply**.

Conclusion

The landlord's application has been granted.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

At the landlord's request, I allow him to retain the tenant's security deposit of \$600 in partial satisfaction of his monetary award of \$4690, and I grant the landlord a final, legally binding monetary order for the balance due pursuant to section 67 of the Act for the amount of \$4090, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after the order has been served upon her, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

The portion of the tenant's application seeking cancellation of the Notice, an order for repairs, and a reduction in rent is dismissed, without leave to reapply.

The portion of the tenant's application seeking monetary compensation is dismissed, with leave to reapply, as that portion was severed as noted above.

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 06, 2014

Residential Tenancy Branch

