



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, DRI, CNC, CNR, MNDC, OLC, RP, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. 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. Neither party requested an adjournment or a Summons to Testify. 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 one month Notice to End Tenancy was personally served on the Tenant on February 18, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail on March 4, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated February 18, 2014?
- b. Whether the tenant is entitled to an order cancelling a 10 day Notice to End Tenancy?
- c. Whether the tenant is entitled to a repair order?
- d. Whether the tenant is entitled to a monetary order and if so how much?
- e. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on December 1, 2011. The written tenancy agreement provided that the tenant(s) would pay rent of \$825 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$412.50 at the start of the tenancy. The rent has subsequently been increased although the tenant submits the increases are in excess of what is permitted under the Residential Tenancy Act.

Application to Cancel the One month Notice to End Tenancy:

One of the grounds contained in the one month Notice to End Tenancy is that the tenant is repeatedly late paying the rent. I determined the tenant has been the late rent on all but three occasions since the start of the tenancy in December 2011. The Policy Guidelines provides that 3 or more late payments constitute repeated late payments. I determined the landlord has sufficient grounds to end the tenancy on this basis. As a result of this determination it is not necessary to consider the other grounds set out in the Notice.

Determination and Orders

As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. The landlord stated that he was content for the end of tenancy to occur on April 30, 2014 and not April 1, 2014 as set out in the Notice provided the tenant paid the rent for April on time. The tenant represented she would pay the rent for April on time

Order for Possession

The Residential Tenancy Act provides that where a landlord has made an oral request for an Order for Possession at a hearing where a dispute resolution officer has dismissed a tenant's application to set aside a Notice to End Tenancy, the dispute resolution officer must grant an Order for Possession. The landlord made this request at the hearing. **As a result I granted the landlord an Order for Possession effective April 30, 2014.**

The landlord has not served a 10 day Notice to End Tenancy and the tenant is current on rent payments. As a result there is no need for an order cancelling a 10 day Notice as not such Notice was given.

Application for a Repair Order:

I ordered that the landlord make the following repairs within 7 days of receiving this decision and order:

- a. Repair the leak under the sink
- b. Replace the handle and chain on the toilet.

Monetary Order:

I determined the Notices of Rent Increases given by the landlord were not consistent with what is permitted under the Residential Act. The landlord served a Notice of Rent Increase that set the effective rent at \$850 per month. The allowable rent increases as provided under the Residential Tenancy Act would increase the rent to \$845.63. The tenant has made an overpayment of \$40 and she is entitled to reimbursement of that sum. The landlord served a second Notice of Rent Increases that purported to increase the rent to \$875 for February 2014 and March 2014. The landlord was not entitled to increase as the Act requires that an increase remain in effect for 12 months (the previous increase remained in effect for 9 months). As a result I determined the tenant has made an overpayment of \$58.74 for the last two months.

In summary I determined the tenant is entitled to the sum of \$98.74 being the amount of the overpayment that she had made. **I ordered the landlord to pay to the tenant the sum of \$98.74 plus \$25 for the cost of the filing fee (reduced by one half as the tenant has been partially successful in this application) for a total of \$123.74 such sum may be deducted from future rent.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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 18, 2014

Residential Tenancy Branch

