



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF, O, CNR, MNR, MNDC, RP, PSF

Introduction

There are applications filed by both parties. The landlord seeks an order of possession to end the tenancy, a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss and recovery of the filing fee. The tenant has also filed an application seeking an order to cancel a notice to end tenancy issued for unpaid rent or utilities, for money owed or compensation for damage or loss, an order for repairs to the unit, site or property and an order for the landlord to provide 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.

The landlord stated that she wished to seek compensation for damages to the rental unit. I find that as the landlord has failed to provide any details of damages in the body of her application and that no details for the hearing has been submitted, that the landlord's claim for damages cannot be dealt with in this hearing. However, the landlord is at liberty to file a separate monetary claim for damages against the tenant in a separate application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the tenant entitled to an order cancelling the notice to end tenancy?

Is the landlord entitled to a monetary order?

Is the tenant entitled to a monetary order?

Is the tenant entitled to an order for repairs?

Is the tenant entitled to an order for the landlord to provide services or facilities agreed upon but not provided?

Background and Evidence

Both parties agreed that there was a rental agreement for the tenant to pay the landlord \$500.00 per month.

The landlord states that there is a signed tenancy agreement which states both parties agreed to a 1 month tenancy from March 1, 2014 ending on March 31, 2014 in which both parties agreed that the tenant will pay the landlord \$500.00. The tenant disputes this stating that the signature on the signed agreement is not his and is a forgery. The landlord disputes this stating that it is the tenant's signature and that if you compare the signature with the one provided on the tenant's application and submitted documentary evidence that this will show that they are the same.

Both parties agreed that the landlord served the tenant with a 10 day notice to end tenancy issued for unpaid rent dated March 3, 2014. The notice states that the tenant failed to pay rent of \$500.00 that was due on April 3, 2014. The landlord stated that this was a typo and was clearly a clerical error on her part. The landlord clarified that the tenant failed to pay rent for March and April 2014 of \$500.00 for each month. The tenant confirmed receiving the 10 day notice dated March 3, 2014 and stated that he did not pay any rent for March and April 2014 because of issues relating to the tenancy. The tenant confirms in his direct testimony that he still resides at the rental unit and as of the date of this hearing has not paid any rent because of rental condition issues which are in dispute with the landlord.

The landlord seeks a monetary order for unpaid rent. The landlord clarified that as the tenant is still occupying the rental unit that the landlord is seeking continued unpaid rent. This consists of \$500.00 for unpaid rent for March 2014, \$500.00 for unpaid rent for April 2014, \$500.00 for unpaid rent for May 2014 and recovery of the \$50.00 filing fee. The landlord states that there is damage caused by the tenant, but has not provided any details of such.

The tenant's application states that he is seeking a monetary claim of \$3,000.00. This consists of lost wages totalling, \$2,000.00 and \$1,000.00 for the cost of cleaning the rental unit. The tenant states that because he was left homeless for a partial week

totalling, 3 days, the tenant helped clean the rental unit and wash windows for at least 4 hours, spent \$30.00 on cleaning supplies, was left with no heat in the house, that there was black mold on windows and in the master bedroom and bathroom, the landlord is attending the rental unit without proper notice, uses the washroom and paper without replacing them, found fleas in his room and the living room, that the washing machine does not function properly and has to go use a Laundromat. The tenant states that he is suffering too much stress because of all of these rental issues. The landlord disputes this stating that there are other who have lived in the rental property who have never reported any issues. The tenant states that he has requested a city of Vancouver inspection due to rental condition issues, but that the inspection has not yet taken place. The tenant states that the loss of wages was "theoretical" as he is a currently unemployed electrician. The tenant has stated that he did not lose a paid job, but that that due to a lack of sleep from stress he did not work. The landlord confirmed in her direct testimony that the tenant does not work and that previous rent was received from the social services. The tenant confirmed this stating that he used his social services cheques to buy food. The tenant does not have any proof of lost wages or cleaning costs as the \$1,000.00 is based upon, "time is money". The tenant clarified that he did not spend any money for which is he claiming and that the claim is based upon his time.

The tenant also seeks an order for the landlord to provide laundry facilities and lighting. The tenant refers to the details of his written dispute in his application. The tenant stated that he had witnesses, but that none of them are currently available for the hearing. The landlord disputes this claim stating that there was never a promise to provide laundry facilities. The landlord also states that she has never been provided notice of any rental issues prior to this hearing. The landlord states that she has witnesses who can attest to the condition of the rental unit.

Analysis

I find on a balance of probabilities that the tenant's signature on the landlord's submitted copy of a signed tenancy is not that of the tenant's. In comparing, the tenant's application, and two different letters of statement by the tenant, I find that these signatures do not match. The landlord does not have any other supporting evidence that this is the tenant's signature. As such, I find that the submitted copy of a signed tenancy agreement for 1 month from the landlord cannot be considered a signed mutual agreement by the tenant.

However, as both parties have confirmed a tenancy in which the tenant pays to the landlord \$500.00 per month to occupy the rental, I am satisfied that a tenancy exists.

The tenant has confirmed in his direct testimony that he has not paid any rent for March, April and May and is still occupying the rental unit.

Section 26 of the Residential Tenancy Act states,

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.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

I find that the tenant through his own direct testimony has failed to pay rent in contravention of section 26 of the Act. The tenant has withheld rent over a dispute concerning the condition of the rental. The tenant has not provided an order from the Residential Tenancy Branch or a Court Order authorizing this and as such, the landlord has established a claim for an order of possession for unpaid rent. The landlord is granted an order of possession. The tenant must be served with the order of possession. 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.

I find based upon the undisputed testimony of the landlord and the direct testimony of the tenant who confirms that no rent has been paid for March, April and May of 2014 for \$500.00 for each month totalling, \$1,500.00, that the landlord has established a claim for unpaid rent of \$1,500.00. The tenant admitted in his direct testimony that no rent was paid for these three months and is still occupying the rental unit.

On the issue of the tenant's request for monetary compensation of \$3,000.00, which consists of lost wages of \$2,000.00 and \$1,000.00 for cleaning, I find on a balance of probabilities that the tenant has failed.

Neither party has provided supporting evidence in the form of witness statements for this hearing, although each states that they have witnesses. The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. On this basis, I find that the tenant has failed to provide sufficient evidence to satisfy me of his monetary claim. The tenant's monetary claim is dismissed

As for the remaining portions of the tenant's application, as the landlord has been granted an order of possession, I decline to make any order for repairs or for the landlord to provides services or facilities agrees upon. However, I note that the tenant has failed to provide sufficient evidence to satisfy me that repairs are warranted or that there was an agreement to provide laundry services.

Conclusion

The landlord is granted an order of possession and a monetary order for \$1,550.00. The tenant's entire 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: May 21, 2014

Residential Tenancy Branch

