



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MND, MNDC, FF, MT, DRI, CNL, CNR

Introduction

There are applications filed by both parties. The landlord has made an application for an order of possession for landlord's use, a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss and recovery of the filing fee. The tenants have applied to be allowed more time to make an application to cancel a notice to end tenancy issued, if allowed to cancel a notice to end tenancy issued for landlord's use, to cancel a notice to end tenancy issued for unpaid rent and to dispute an additional rent increase.

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 served upon them by the other, I am satisfied that both parties have been properly served.

Preliminary matter(s)

Is the tenant entitled to more time to make an application to cancel a notice to end tenancy?

Both parties confirmed in their direct testimony that the landlord served the tenant with a 2 month notice to end tenancy issued for landlord's use dated February 28, 2014. The tenant confirmed receiving it in person on March 1, 2014. The tenant filed their application for dispute resolution on April 7, 2014. When asked, "why you waited to file an application?," the tenant stated, "I don't know", "I did not realize it". The tenant confirmed that she did read the notice and understood it. The tenant stated that she could not find an address of an office to go to, but did make attempts to call into the Residential Tenancy Branch's telephone line for information.

Residential Tenancy Branch Policy Guideline # 36 speaks to “Extending a Time Period,” and provides in part as follows:

The word “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word “exceptional” implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a “reason” without any force of persuasion is merely an excuse. Thus, the party putting forward said “reason” must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered “exceptional” circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

I find that the tenants have failed to meet the burden of proving there were exceptional reasons giving rise to their late application to dispute the 2 month notice. Accordingly, the tenants’ application for more time to make an application to dispute the notice is hereby dismissed.

As the landlord has also filed an application for an order of possession as a result of a 2 month notice to end tenancy dated February 28, 2014, I find that the tenant has been properly served with this notice based upon the undisputed evidence of both parties. The landlord has established a claim for an order of possession. The landlord is granted an order of possession. The order must be served upon the tenants. Should the tenants fail to comply with this order, this order may be filed in the Supreme Court of British Columbia for enforcement.

As the tenancy is at an end, the tenant’s application to cancel a notice to end tenancy is dismissed as well as the tenant’s request to cancel a notice to end tenancy issued for unpaid rent.

As for the tenant’s request to dispute an additional rent increase, I find that the tenant has failed. The tenant states that monthly rent is \$700.00 as opposed to the \$750.00 as stated on the 10 day notice dated April 1, 2014 as provided by the tenant. The tenant states that the rent was raised 6 months previously and that the tenant always paid the

rent without dispute. The landlord confirms that the rent was increased 6 months previously and that the tenant paid the increased amount of \$750.00 monthly until this dispute. The landlord states that there is no signed tenancy agreement. The tenant disputes this stating that there is a signed agreement, but has failed to provide a copy. On a balance of probabilities, I find that the tenant has failed to establish a claim that there was an additional rent increase for which the tenant did not accept. The tenant stated in her direct testimony that she has no further evidence to support her claim. The tenant's application to dispute an additional rent increase is dismissed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Background and Evidence

The landlord states that the tenant failed to pay rent of \$750.00 for the month of April and May of 2014 and still occupies the rental unit. The tenant confirmed this in her direct testimony that no rent has been paid. The landlord states that the tenant caused damage to the door frame of an entry door that required repairs in the amount of \$350.00. The tenant disputes that there is any damage.

Analysis

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. In this case, the landlord has failed to provide sufficient evidence to satisfy me of their damages claim of \$350.00. The landlord has not provided any photographs, receipts or invoices for any repairs or to show any damage. This portion of the monetary claim is dismissed.

I find based upon the undisputed evidence of both parties that the landlord has established a monetary claim for unpaid rent. The tenant, A.R. confirmed in her direct testimony that, "we did not pay rent" for April 2014. I also find that the landlord is also entitled to unpaid rent of \$750.00 for May 2014 as the tenant still occupies the rental unit and has as of the date of this hearing failed to pay any rent.

The landlord has established a total monetary claim of \$1,450.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. The landlord is granted a monetary order for \$1,500.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$1,500.00. 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 28, 2014

Residential Tenancy Branch

