



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF, O

Introduction

This was the hearing of an application by the landlord for a monetary award. The landlord also requested an order for possession pursuant to the terms of the tenancy agreement. The hearing was conducted by conference call. The named landlord and the tenant called in and participated in the hearing. The landlord was assisted by the named representative who participated in the hearing on the landlord's behalf.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to an order for possession?

Background and Evidence

The rental unit is a house in Richmond. The tenancy began in October 2012. The monthly rent is \$2,500.00, payable on the first of each month. The tenancy began for a six month term. A second tenancy agreement was made to commence on April 1, 2013 for a one year term ending April 30, 2014. The tenancy agreement did not specify that the tenant must move out at the end of the fixed term and it did not state that it would continue on a month to month basis.

The landlord claimed that the tenant has failed to pay utilities and that he is operating a marijuana grow operation in the rental unit that has resulted in the City of Richmond charging the landlord for inspection fees in the amount of \$4,200.00 that have been outstanding since June, 2013. The landlord claimed that he is entitled to an order for possession pursuant to the terms of the fixed term tenancy agreement that required the tenant to move out of the rental unit at the end of the term on April 30, 2014.

The tenant said that he has not been given a valid notice to end his tenancy and he is not required to move out on April 30th. The tenant said that there are no grounds to end the tenancy for cause because he has a licence to grow marijuana for personal use

issued by Health Canada. The tenant acknowledged that he did not ask for the landlord's permission to grow marijuana in the rental unit, but he submitted that the landlord cannot evict him for engaging in a lawful activity.

The tenant said that he made "an agreement in principle" with the landlord "to pay for the extraordinary utilities that I am responsible for as deemed to be my responsibility by the BC Rental board". The tenant said that: "There is an obscure amount owing due to the fact that previous to my understanding of my rights as a tenant I was forced to sign an agreement to pay a percentage of the utilities or they would evict me".

The landlord submitted a copy of an agreement dated June 16, 2013. The agreement provided that the landlord would pay the water and waste water utility bill from the City of Richmond to a maximum of \$200 per three month billing period and any amount over and above the \$200.00 sum is to be paid by the tenant. For the period from January to March the sum of \$670, if not refunded was to be split 50/50 between the landlord and the tenant.

The landlord submitted a copy of a utility account statement from the City for 2013 until January 28, 2014. The landlord submitted an invoice from the City of Richmond pursuant to the Property Maintenance & Repair (Grow Op) Bylaw for unpaid inspection fines outstanding as of December 31, 2013 relating to the rental property in the amount of \$4,200.00.

The landlord claimed payment of the sum of \$5,440.91, calculated as follows:

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|-------------------------------------|------------|
| • Unpaid utility Qtr 3: | \$997.48 |
| • Unpaid utility Qtr 4: | \$338.03 |
| • Tenant's returned cheque: | \$305.40 |
| • Less utility covered by landlord: | -\$400.00 |
| • Unpaid inspection fee: | \$4,200.00 |

Total amount unpaid by tenant: $\$1,240.91 + \$4,200 = \$5,440.91$

The landlord testified that the tenant did not seek permission or inform the landlord of the grow op in the rental property. He said the property was raided by the RCMP and the inspection invoice was charged against the property by the City of Richmond as a result. The landlord said that the tenant was using an excessive and extraordinary amount of utilities as a result of his marijuana operation and he has caused extensive damage to the rental property. The landlord wants the tenant to immediately move out.

Analysis

The landlord has not served the tenant with a Notice to End Tenancy for cause. He relied on the tenancy agreement in support of his position that the tenant must move out at the end of the fixed term. Although the tenancy agreement signed by the parties was for a term starting on April 1, 2013 and ending on April 30, 2014, the standard form tenancy agreement was not marked as required to indicate that the tenant must move out of the rental property at the end of the fixed term. I find that the tenancy therefore continues on a month to month basis until it is ended in accordance with the *Residential Tenancy Act*. This may require the landlord to serve a Notice to End Tenancy for cause or make a mutual agreement to end the tenancy, or to end the tenancy on some other ground recognized by the *Residential Tenancy Act*.

With respect to the landlord's claim for a monetary award, I find that the tenant agreed to pay the excess utilities as claimed by the landlord and I find that the tenant is liable to pay the inspection invoice charged to the landlord by the City of Richmond in the amount of \$4,200.00. There is no evidence to show that the agreement was made under duress and I find that it was made because the tenant was consuming excessive amounts of water.

Conclusion

The landlord's application for an order for possession is dismissed with leave to reapply. I grant the landlord a monetary award in the amount claimed. The landlord is entitled to recover the \$1200.00 filing fee for this application, for a total award of 5,540.91 and I grant the landlord an order under section 67 in the said amount. This order may be registered in the Small claims Court and enforced as an order of that court.

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: June 2, 2014, 2014

Residential Tenancy Branch

