



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, ERP, OPR, OPC, MNR, MDSD & 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 sufficiently served on the Tenant by posting on June 2, 2014. I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenant by posting on July 18, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. 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 10 day Notice to end tenancy dated July 18, 2014
- b. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated June 2, 2014
- c. Whether the tenant is entitled to an order for emergency repairs?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?

- f. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on March 30, 2014. The rent is \$700 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$350 and a pet damage deposit of \$150 at the start of the tenancy.

The tenant failed to pay the rent for July and the sum of \$700. The tenant does not dispute the rent remains unpaid. She initially testified that she did not think she had to pay the rent because of the failure of the landlord to take proper care of the rental unit. She further testified the landlord has failed to attend to pick up the rent that she was uncertain who she should be paying the rent to as the upstairs tenant told her that she has purchased the rental unit.

The landlord testified he remains the owner and the property has not been sold. Further, he has come to the rental unit on several occasions but the tenant would not answer the door. He has left messages but the tenant refuses to return his messages.

Tenant's Application to Cancel 10 day Notice to End Tenancy:

Section 26(1) of the Residential Tenancy Act provides as follows:

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

The Residential Tenancy does not permit a tenant to withhold the payment of rent even where the landlord has failed to comply with the Act unless the tenant has first applied

for and obtained a monetary order against the landlord. I am satisfied the sum of \$700 remains owing in rent for July. The tenant has not obtained a monetary order against the landlord and does not have a legal right to withhold the rent. It may be the tenant has a claim against the landlord but the tenant must first apply and have that claim adjudicated. I do not accept the submission of the tenant that the landlord has failed to attend to pick up the rent. I determined the reason the rent has not been paid is because the tenant has chosen not to pay it. As a result I dismissed the tenant's application to cancel the 10 day Notice. The tenant may have a claim for the reduced value of the tenancy but she must first file an Application for Dispute Resolution making such a claim. An arbitrator has no jurisdiction to make such an award in the absence of an application.

Application to Cancel the one month Notice to End Tenancy and for an order for emergency repairs:

It is not necessary to consider the tenant's application to cancel the one month notice as the tenancy will be coming to an end pursuant to the 10 day Notice to End Tenancy. Similarly, it is not necessary to consider the tenant's application for emergency repairs as the tenancy is coming to an end.

Landlord's Application - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant's application to cancel the 10 day notice has been dismissed. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession on 2 days after service on the Tenant.

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.

Landlord's Application - Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of July and the sum of \$700 remains outstanding. I dismissed the claim for loss of rent for August with liberty to re-apply as that claim is premature and the landlord may not suffer a loss. I dismissed the claim for the tenant's share of the hydro with liberty to re-apply. Again that claim is premature. The tenant disputes the claim. The landlord acknowledged the written tenancy agreement does not provide for this. However, he testified there was an oral agreement. I determined it was appropriate for those issues to be determined at a later date when the parties can provide all of the documents. I granted the landlord a monetary order in the sum of \$700 plus the sum of \$50 in respect of the filing fee for a total of \$750.

Security Deposit

I determined the security deposit and pet damage deposit totals the sum of \$500. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$250.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: August 01, 2014

Residential Tenancy Branch

