



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNC, MT, OLC, FF
For the landlord: MNSD, OPB, OPC, MNR, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied seeking an order cancelling the landlord’s 1 Month Notice to End Tenancy for Cause, for an order granting more time to make an application to cancel a notice to end tenancy, for an order requiring the landlord to comply with the Act, and for recovery of the filing fee paid for this application.

The landlord applied for authority to retain the tenant’s security deposit, an order of possession for the rental unit due to unpaid rent and alleged breach of an agreement with the landlord, a monetary order for unpaid rent, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

Both parties, the tenant’s advocate, and the landlord’s witness attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other’s evidence.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-The tenancy has now concluded; therefore, it was no longer necessary for me to consider the tenant's application seeking cancellation of a Notice, or more time to make an application to cancel the Notice, or for an order requiring the landlord to comply with the Act. Additionally, it was no longer required to consider the landlord's request for an order of possession for the rental unit. The hearing proceeded on the landlord's application seeking monetary compensation.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation and for recovery of the filing fee paid for this application?

Background and Evidence

The oral evidence of the parties confirmed that this tenancy began on July 1, 2011, monthly rent began at the amount of \$700, that the monthly rent increased over the tenancy to an ending monthly rent of \$725, and the tenant paid a security deposit of \$350, which the landlord has retained. The tenant submitted that he vacated the rental unit on June 2, 2014.

Landlord's application-

The landlord's monetary claim listed on her application is \$2181.89. I was not able to reconcile her monetary claim with the breakdown provided in her documentary evidence; however, the landlord listed the amounts of \$504.65 and \$1050.65 as unpaid utilities over the entire course of the tenancy, unpaid rent of \$725 for June, and a re-cut key charge of \$4.76.

The landlord's relevant documentary evidence included utilities bills, the written tenancy agreement, written details of the dispute, and a note provided by the tenant to the landlord.

In support of her application, as to the unpaid utilities, the landlord submitted that the tenant was obligated to pay for any hydro costs exceeding \$100 per month, as noted in the written tenancy agreement. The landlord confirmed that during the course of the tenancy, she never submitted any utility bills to the tenant, but rather she would telephone the tenant and inform him he was using too much. The landlord further confirmed that she never pushed the issue with the tenant.

As to the landlord's claim for unpaid rent for June, the landlord submitted that although the tenant vacated on June 2, 2014, he kept returning to the rental unit all month and removing personal property and doing his laundry. The landlord submitted that the last day of the tenant came by the rental unit was June 30, 2014.

The landlord submitted that she was entitled to a new key cost as the tenant continued to return to the rental unit after vacating.

Tenant's response-

The tenant submitted that he never knew about the hydro costs until after he filed his application against the landlord. The tenant submitted further that the clause concerning his responsibility of hydro costs over \$100 per month was added after his signature on the tenancy agreement.

The tenant's advocate submitted that the tenant had never been presented with a utility bill for the entire length of the tenancy.

The tenant's advocate submitted further that the tenant was never served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

As to the claim for unpaid rent for June, the tenant submitted that he was not aware he had to pay rent for June as he was being forced out of the rental unit. Additionally, the tenant submitted that the landlord kept stopping by the rental unit.

The tenant submitted further that he kept stopping by the rental unit to clean and that he was under the impression that he could stay in the rental unit until this hearing as he disputed the 1 Month Notice to End Tenancy for Cause.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

I find that the tenant owed rent for the month of June 2014 under the terms of the tenancy agreement, and did not pay. I therefore find the landlord is entitled to a monetary award for unpaid rent of \$725 for June 2014.

As to the issue of unpaid utilities, Section 6 of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under the term. In reviewing the tenancy agreement, I do not find that the document clearly communicates that the tenant was to pay to the landlord for any hydro usage over \$100. For instance, the tenancy agreement does not state that the tenant would pay the landlord for overage of \$100, or in what instance the tenant would be responsible, such as with submission of the utility bill. As the landlord confirmed she has never presented the tenant with a bill for utilities, I find that this landlord is unable to prove her contention that the tenant was responsible for utilities. Further, section 7(2) of the Act requires that the claiming party take reasonable steps to minimize their claimed loss. In this case, I find the landlord failed to take those reasonable steps due to never having presented the tenant with a utility bill during the tenancy, waiting until the tenancy was over. I find it reasonable that if the agreement of the parties was such as the landlord has presented, the landlord would address the matter at the first instance of alleged non-compliance of the tenant, not three years later.

Due to the above, I find the landlord has not supported her claim for unpaid utilities, not complied with the Act in taking reasonable steps to minimize her loss, and I dismiss the same.

As to the landlord's request for a new key cost, as the landlord has not submitted a receipt or proof that she incurred this cost, her claim for \$4.76 is dismissed.

As the landlord has had partial success with her application, I award her recovery of the filing fee of \$50.

Due to the above, I find the landlord is entitled to a monetary award of \$775, comprised of unpaid rent of \$725 for June 2014 and the filing fee paid for this application of \$50.

Conclusion

As the tenant had vacated the rental unit prior to the hearing, I dismiss the tenant's application, without leave to reapply.

The landlord's application has been partially successful as I have granted her a monetary award of \$775.

At the landlord's request, I direct her to retain the tenant's security deposit of \$350 in partial satisfaction of her monetary award of \$775 and I grant the landlord a final, legally

binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$425, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court? The tenant is advised that costs of such enforcement are recoverable from the tenant.

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: July 28, 2014

Residential Tenancy Branch

