



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1584855 Alberta Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, OPC, OPB / MNR, MND, MNDC, MNSD, FF
CNR, CNC / MNDC / LRE / AAT / LAT / RR / FF

Introduction

This hearing concerns 2 applications:

i) by the landlord for an order of possession (unpaid rent or utilities, cause, breach of agreement) / a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of all or part of the security deposit / and recovery of the filing fee;

ii) by the tenant for cancellation of a notice to end tenancy for unpaid rent or utilities / cancellation of a notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order suspending or setting conditions on the landlord's right to enter the rental unit / allow access to (or from) the unit or site for the tenant or the tenant's guests / permission to change the locks to the unit / allow a reduction in rent for repairs, services or facilities agreed upon but not provided / recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy is from June 20 to December 20, 2014. Monthly rent is due and payable in advance on the 20th day of each month. Monthly rent is \$1,500.00, however, there is provision in the tenancy

agreement for a reduction of \$600.00 per month in exchange for “maintenance and upkeep” duties undertaken by the tenant. Following from the foregoing, monthly rent would be \$900.00. A security deposit of \$800.00 was collected. A draft of the move-in condition inspection report was completed by the landlord in advance of the start of tenancy on June 17, 2014, in the absence of the tenant.

Pursuant to section 46 of the Act which addresses **Landlord’s notice: non-payment of rent**, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated July 28, 2014. The notice was served by way of posting on the unit door on that same date. A copy of the notice was submitted in evidence. Subsequently, the tenant made no further payment toward either rent or utilities, and he testified that he later moved out of the unit sometime around the end of August or early September 2014. Despite this, the tenant testified that he has still not completely removed all of his possessions from the unit, and neither has he returned all keys to the landlord.

Pursuant to section 47 of the Act which addresses **Landlord’s notice: cause**, the landlord issued a 1 month notice to end tenancy dated August 07, 2014. A copy of the notice was submitted in evidence, and there are several reasons identified on the notice in support of its issuance. As noted above, the tenant testified that he moved out of the unit sometime around the end of August or early September 2014.

A move-out condition inspection report has not presently been completed, and the tenant declined to inform the landlord of his forwarding address during the hearing.

The tenant’s application for dispute resolution was filed on July 31, 2014, and the landlord’s application for dispute resolution was filed on August 14, 2014.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.gov.bc.ca/landlordtenant

The attention of the parties is drawn to the following particular statutory provisions:

ACT

Section 19: **Limits on amounts of deposits**

Section 20: **Landlord prohibitions respecting deposits**

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

REGULATION

Section 7: **Non-refundable fees charged by landlord**

Based on the documentary evidence and testimony of the parties, the various aspects of the respective claims and my related findings are set out below.

LANDLORD

Order of Possession

I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent or utilities dated July 28, 2014. While the tenant filed an application to dispute the notice within 5 days after receiving it, he later made no payment toward rent or utilities before moving out of the unit around the end of August or early September 2014. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As the landlord has established entitlement to an order of possession on the basis of the 10 day notice, I find there is no requirement that I consider the landlord's request for an order of possession on the basis of the 1 month notice.

\$900.00: *unpaid rent from July 20 to August 19, 2014*

\$1,500.00: *unpaid rent from August 20 to September 19, 2014*

\$1,500.00: *unpaid rent from September 20 to October 19, 2014*

The parties are in agreement that the tenant made no payment toward either rent or utilities after issuance of the 10 day notice dated July 28, 2014. Further, I find that the tenant failed to establish entitlement to a \$600.00 reduction in rent in exchange for "maintenance and upkeep" duties for the periods of August 20 to September 19, or September 20 to October 19, 2014. Accordingly, I find that the landlord has established entitlement to compensation for unpaid rent in the total amount of **\$3,900.00**.

\$600.00: *repayment of reduction in rent from July 20 to August 19, 2014*

The landlord seeks to reclaim the reduction in rent for this period, alleging that the tenant failed to perform the "maintenance and upkeep" duties required in order to qualify for this reduction. However, I note that the 10 day notice dated July 28, 2014

documents rent unpaid when due on July 20, 2014 in the limited amount of \$900.00, not \$1,500.00. In the result, this aspect of the application is hereby dismissed.

\$325.00: fees assessed for late payment of rent

Pursuant to the tenancy agreement, I find that the landlord has established entitlement to recover fees for late payment of rent in the limited amount of **\$75.00**, as follows:

\$25.00 x 3: rent unpaid when due on July 20, August 20, and September 20, 2014

In addition to the above, the landlord seeks compensation reflecting the following provision in the tenancy agreement:

...."an additional \$10.00 per day for each day not paid will be charged for late fees."

Further to specific provisions set out in section 7 of the Regulation which addresses **Non-refundable fees charged by landlord**, section 5 of the Act speaks to how **This Act cannot be avoided**. In short, there is no statutory provision which authorizes the landlord to assess the additional \$10.00 claim(s) arising from late payment of rent. In the result, that aspect of the application is hereby dismissed.

\$300.00: pet damage deposit

The landlord is referred to the applicable sections of the Act, as set out above.

\$137.06: hydro - for billing date August 08, 2014

\$52.83: Fortis gas – to July 15, 2014

\$51.92: Fortis gas – from July 15 to August 06, 2014

Total: \$241.81

I find that the landlord informed the tenant of the above amounts by sending copies of billing statements by way of registered mail. I find that the tenant did not claim the registered mail. On a balance of probabilities I further find that the tenant had possession of a key to the mail box. Further, the tenant testified that he made no payment whatsoever toward utilities at any point during the term of his tenancy. In the result, I find that the landlord has established entitlement to the full amount(s) claimed.

\$50.00: reimbursement of funds paid to tenant for "laminare"

In the absence of sufficient evidence that the "laminare" paid for does not still remain on the property, this aspect of the application is hereby dismissed with leave to reapply.

\$290.00: estimated cost for removal and disposal of trees and limbs

\$540.00: estimated cost for removal of damaged trees & replanting of replacement trees

\$180.00: estimated cost for plowing, leveling, tractor use and fuel

These aspects of the landlord's application are hereby dismissed for the following reasons: i) no actual costs have been incurred; ii) the move-in condition inspection report in evidence is limited to a draft which was completed by the landlord in the absence of the tenant and prior to the start of tenancy; and iii) as a move-out condition inspection report has not been completed, there are no comparative results from reports in evidence.

\$30.00: estimated cost for replacement of equipment keys

As the tenant still has possession of the unit and has not presently surrendered any of the keys in his possession, I find that this aspect of the landlord's application is premature. Accordingly, it is hereby dismissed with leave to reapply.

Total: \$4,216.81 (\$3,900.00 + \$75.00 + \$241.81)

TENANT

Cancellation of notices to end tenancy

As I have found that the landlord has established entitlement to an order of possession on the basis of the 10 day notice, this aspect of the application is hereby dismissed.

Various orders & permission

In the absence of sufficient evidence and as an order of possession has been issued in favour of the landlord on the basis of unpaid rent or utilities, these aspects of the tenant's application are all hereby dismissed.

\$250.00: *cost of cleaning unit at time of move-in*

The tenant claims that this amount was paid to friends who completed the cleaning, however, there are no receipts in evidence. The landlord claims the tenant's rent was reduced at the start of tenancy in exchange for such duties. On balance, I find that the tenant has failed to prove entitlement to this claim, and it is hereby dismissed.

\$200.00: *reimbursement of cost for mower fuel*

As the landlord accepts responsibility for this aspect of the claim in the limited amount of **\$10.00**, I find that the tenant has established entitlement to that amount. However, in the absence of any conclusive documentary evidence from the tenant in support of the additional cost claimed, receipts for example, the remaining balance sought in the amount of \$190.00 is hereby dismissed.

\$50.00: *cost of repairs to kitchen door*

\$11.25: *dump fees*

\$1.99: *wax toilet seal set*

Sub - Total: \$63.24

As the landlord does not dispute these aspects of the tenant's claim, I find that the tenant has established entitlement to the full amount claimed.

\$300.00: *cost of moving*

Even while the tenant testified that he has moved out of the unit, he also stated that some of his belongings still remain there. Additionally, there are no related receipts in evidence to support the tenant's claim and, in any event, I have found that the landlord established entitlement to an order of possession on the basis of a 10 day notice issued for unpaid rent or utilities. Following from all the foregoing, I find that the tenant has failed to establish entitlement to this aspect of his claim and it is therefore dismissed.

\$350.00: *"overpayment" of security deposit*

As noted above, the attention of both parties has been drawn to section 19 of the Act which addresses **Limits on amounts of deposits**. Further, however, irrespective of the amount collected by the landlord, the respective entitlements established by the parties as a result of a hearing would be offset against each other, leading to a net entitlement to one or other of the parties.

\$35.00: *cost of registered mail*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application is hereby dismissed.

Total: \$73.24 (\$10.00 + \$63.24)

Filing fees

The respective applications to recover the filing fee are both hereby dismissed.

Offsetting the respective entitlements, I find that the landlord has established a net claim of **\$4,143.57** (\$4,216.81 - \$73.24). I order that the landlord retain the security deposit of **\$800.00**, and I grant the landlord a **monetary order** for the balance owed of **\$3,343.57** (\$4,143.57 - \$800.00).

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$3,343.57**. This order may be served on the tenant, filed 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: October 08, 2014

Residential Tenancy Branch

