



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, 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.

The tenant testified the landlord served a one month Notice to End Tenancy on them on July 14, 2014 that stated they must vacate by August 15, 2014. I find that the 10 day Notice to End Tenancy was personally served on the Tenants on August 1, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the tenants on August 14, 2014. 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 landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into an oral tenancy agreement that provided that the tenancy would start on December 1, 2013 and continue on a month to month basis. The tenants paid a security deposit of \$325 at the start of the tenancy. The rent is \$650 per month payable on the first day of each month.

The tenants failed to pay the rent when due. At the time the Application for Dispute was filed on August 12, 2014 the tenants owed the sum of \$300 in rent for July. They have since paid that sum. The tenants presently owe the sum of \$450 for August, \$650 for September and \$650 for October for a total of \$1750. The tenants do not dispute the rent is owed.

The tenants raised the following:

- They testified the suite is an illegal suite. It is infested with rats and is in need of significant repairs. The landlord is playing games with them and has turned off the power. The rental unit is dangerous as a result.
- The landlord orally agreed they did not have to pay the rent until the repairs were made. They subsequently testified they have an agreement in writing which the landlord signed. The tenants did not provide the Residential Tenancy Branch and the Landlord with a copy of this alleged agreement.
- The tenants did not file an Application for Dispute Resolution disputing the two Notices because of the oral agreement with the landlord.

The landlord testified that he never agreed with the tenants that they did not have to pay the rent. He further testified that he has made all of the repairs requested on him.

Analysis

Section 26(1) of the Residential Tenancy Act provides that the tenant must pay the rent even where the landlord has failed to do what is required under the tenancy agreement unless they have first obtained an order from an arbitrator reducing the amount of rent

owed or it is an emergency repair which they have incurred. The tenants did not dispute the rent is owed. The tenant did not have the legal right to withhold the rent until this first obtained an order from an arbitrator to do so.

Further, the landlord served a one month Notice to End Tenancy and a 10 day Notice to End Tenancy. Section 46(1)(4) and (5) provides as follows:

Landlord's notice: non-payment of rent

46 (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

The tenants have not filed an Application for Dispute Resolution for an order seeking to cancel the Notice. As a result they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit. The effective date of the 10 Notice to End Tenancy was August 10, 2014. The tenants testified there was an oral agreement on August 27, 2014 (subsequently they testified they have a document in writing signed by the landlord) that they would pay the rent after the landlord completed repairs. The landlord denies such an agreement. The tenants failed to produce a copy of the alleged agreement to the Residential Tenancy Branch or to the Landlord prior to the hearing as required by the Rules. In failing to do so the tenants effectively denied the landlord the opportunity to review the alleged document. I determined it would be contrary to the rules of natural justice and the Rules of Procedure to permit the tenants to produce it after the hearing.

In any event the alleged agreement took place on August 27, 2014 which occurred after the effective date of the Notice and after the tenancy had come to an end. Further, I determined the tenants' evidence on this point is not satisfactory and not credible. At one stage in the proceeding they stated there was an oral agreement. Later they testified they had a copy of an agreement with the landlord's signature on it. In the circumstances I determined the tenants failed to prove there was an oral or written agreement that they did not have to pay the rent until after all repairs were completed. Further, they failed to prove the landlord had agreed they could repay the arrears with payments in the future.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. 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 7 days notice.

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.

Analysis - Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of August (\$450 is owed), September (\$650 is owed) and October (\$650 is owed) and the sum of \$1750 remains outstanding. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. I granted the landlord a monetary order in the sum of \$1750 plus the sum of \$50 in respect of the filing fee for a total of \$1800.

Security Deposit

I determined the security deposit plus interest totals the sum of \$325. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1475.

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: October 08, 2014

Residential Tenancy Branch

