



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MT CNR, OPR, MNR, ERP, FF

Introduction

This hearing was convened in response to an application by the landlord **and** an application by the tenant. The tenant sought to cancel a 10 Day Notice for Unpaid Rent and justify costs for certain repairs or emergency repairs they claim were authorized by the landlord's agent, and to recover the filing fee. The landlord sought an Order of Possession due to unpaid rent, a Monetary Order to recover the unpaid rent and inclusive of recovery of the filing fee associated with this application.

Both parties appeared in the conference call hearing and participated with their testimony. The tenant acknowledged they did not send any document evidence to the landlord and as a result, the evidence they provided to his hearing is inadmissible and will not be considered; however, the parties were provided opportunity to give their evidence orally. I have benefit of a copy of the Notice to End in this matter submitted by the landlord. The tenant advised they are still residing in the rental unit.

Preliminary Matters

The tenant applied later than prescribed by the Act to cancel the 10 Day Notice to End of this matter and has applied for more time to make their application. However, the tenant testified they no longer dispute the Notice as they are vacating in 8 days and to that end both parties agreed to the landlord receiving an Order of Possession effective October 31, 2014. The tenant solely disputes the landlord's claim of unpaid rent of \$730.00., which the tenant withheld from rent for emergency repairs.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The relevant testimony of the landlord and the tenant is that the tenancy began July 02, 2014. I do not have benefit of the tenancy agreement or other start of tenancy documents such as the condition inspection report. Rent is payable in advance on the first day of each month. The tenant failed to pay all rent in the month of August 2014 and the landlord served the tenant with a notice to end tenancy for non-payment of rent. The amount of the landlord's monetary claim is for the unpaid rent in the amount of \$730.00.

The tenant does not dispute that all the rent was not paid. The tenant claims they held back the rent, with prior notice to the landlord's agent, for the cost of emergency repairs, which the tenant claims were authorized by the agent. The landlord disputes the tenant's account and testified that the agent did not authorize the repairs as there were no deficiencies noted at the time of the *move in* inspection – which was not provided into evidence. The landlord further testified that the agent is no longer with or available to the landlord. The tenant testified that within days of starting the tenancy they contacted the agent because the washing machine was not working, a sink tap was blocked and did not function, the humidity control in the washroom did not function and one of the large blinds in the living room were not closing. The tenant testified that they telephoned the agent who directed the repair services and for the tenant to pay for the work, and that they then promised they would refund the tenant. The tenant claims they paid \$200.00 for 1 handyman services + \$350.00 for a second handyman service and \$180.00 to repair the washing machine for a total of \$730.00. Subsequently, when the proper landlord of the unit refused to reimburse the tenant they deducted the following month's rent. The tenant claims they have receipts for the work. The landlord disputes the necessity of the work given their information the rental unit was satisfactory at the outset of the tenancy.

Analysis

Based on the testimony of the landlord and the tenant I find tenant did not pay the outstanding rent and despite having applied for dispute resolution to dispute the notice to end the tenant has only confirmed that the rent was not paid.

I find that the landlord has not presented sufficient evidence to support their position of what their agent did or did not do, or promise to the tenant. Equally, I find that the tenant has not presented evidence to support their position of what the landlord (agent) promised the tenant. None the less, I find the tenant's testimony was matter of fact and embellished. Conversely I find the landlord's testimony was predicated on matters to

which they were not privy; and, they failed to provide evidence - they claimed to possess - to prove their position that the rental unit was not in need of any repairs. I therefore prefer the evidence of the tenant over that of the landlord's where there is a conflict. On balance of probabilities I find the tenant was authorized by the landlord's agent to have certain repairs made, whether deemed to be emergency repairs or not, for which they would then be reimbursed in full. The landlord has refused to reimburse the tenant. As a result, I find that the amount the tenant has deducted from August 2014 rent to be full and just recovery in this matter. As a result, the landlord's monetary claim is **dismissed** in its entirety.

As both parties were partly successful in their claims they are equally entitled to recover their filing fee – with the effect that they cancel out, and I therefore make no award respecting the filing fees.

Based on the above facts and to perfect the agreement of the parties, I grant the landlord an **Order of Possession**.

Conclusion

I grant an Order of Possession to the landlord **effective October 31, 2014**. The tenant must be served with this Order of Possession. 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.

This Decision is final and binding on both parties.

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 22, 2014

Residential Tenancy Branch

