



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, OPC, OPR, MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The tenant applied to cancel a one month Notice to End Tenancy. The tenant also applied to dispute an unlawful rent increase. The tenant later amended his application to dispute a 10 day Notice to End Tenancy for unpaid rent. The landlord applied for an order for possession and a monetary order for unpaid rent.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?
Is the landlord entitled to an order for possession?
Is the landlord entitled to a monetary award for unpaid rent?
Is the tenant entitled to compensation for an illegal rent increase?

Background and Evidence

The rental property is a house in Vancouver. The landlord lives in the upper portion of the house with his family. The lower portion consists of a shared kitchen, living room and bathroom and three bedrooms. The bedrooms are rented to the tenant and to two other occupants, who share the common areas on the lower floor of the house.

The tenancy began on March 1, 2013 on a month to month basis with rent in the amount of \$450.00 payable on the first of each month. The tenant paid a \$225.00 security deposit at the start of the tenancy.

The tenant testified that the rent initially included all utilities, but beginning on May 1, 2014, the landlord raised the rent by charging an additional \$15.00 per month for hydro and an extra \$8.00 per month for cable services. The tenant has paid \$473.00 per

month commencing May 1, 2014. The tenant did not sign any form of written agreement consenting to the rent increase.

On July 31, 2014 the landlord served the tenant with a one month Notice to End Tenancy for cause. The Notice was posted to the door of the rental unit. The ground alleged for the Notice was that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that the tenant was first given a warning letter on July 27th and then a Notice to End Tenancy was given because the other occupants of the rental property have repeatedly complained about the strong and offensive odours that emanate from the tenant's living quarters and from the tenant himself. The landlord said that the problem was related to poor personal hygiene. The landlord submitted letters from the other occupants of the lower rental units. The occupant, N.L. wrote to the landlord on June 2, 2014 to make a complaint about the tenant; he reported: "a strong and offensive odor coming from the tenant's room and body which has reached a point whereby it has affected the quality of life for myself and the other tenant." The same occupant wrote a second letter on July 25th voicing the same complaints. On July 25, 2014 the other occupant, G.D. wrote to the landlord to make the same complaints about a foul odour coming from the tenant's room and his person that he attributed to the the tenant's poor personal hygiene. He also objected to the tenant storing personal goods in the common area inside four large barrels or drums. He also said that the tenant objected to having the windows open even though it was hot in the summer and the circulation of fresh air helped to dissipate the smell in the house.

The tenant said at the hearing that he moved out of the rental unit at the end of August. He has left some of his belongings behind, including a mattress and he said that he hopes to move back to the rental unit if this dispute is resolved in his favour. He has not paid rent for September or for October. The tenant countered the landlord's evidence and the written statements of other occupants. He said that "everybody has an odour" and submitted that the other occupants also have their own distinctive odours. The tenant said that he noticed that the rental unit smelled when he first viewed before he signed a tenancy agreement. He said that he kept the rental unit clean and there were no issues with his personal hygiene. The tenant said that he received permission to store his barrels in the common are and the other occupants also stored items such as boxes in the living room area of the rental property.

The tenant has not paid rent for September or for October. On September 2, 2014 the landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent. The

tenant received the Notice to End Tenancy and amended his application to dispute the 10 day Notice to End Tenancy as well as the one month Notice.

Analysis

The landlord has claimed that there is sufficient cause to end the tenancy based on the written statements of two occupants who share the rental property with the tenant. The tenant has denied that there is cause and disagrees that there is an odour problem or that he has failed to keep the rental unit clean. He also denied that there is an issue with his personal hygiene. There is conflicting evidence with respect to the cause alleged for ending the tenancy; I have the tenant's direct evidence that he does not have an odour problem. The other occupants have provided written statements, but they did not attend the hearing and did not provide direct evidence with respect to the alleged odour problem. I prefer the tenant's direct testimony and documentary evidence to the written statements and I find that the landlord has not demonstrated on a balance of probabilities, that there is sufficient cause to end the tenancy. I therefore order that the one month Notice to End Tenancy dated July 31, 2014 be, and is hereby cancelled.

The tenant has not paid the rent for September or for October. He was given a 10 day Notice to End Tenancy. The tenant did not pay the rent within five days of receiving the Notice to End Tenancy. The *Residential Tenancy Act* permits a tenant to withhold the payment of rent only for the reasons specified in the Act. The tenant has not proved that he had a valid ground for withholding the payment of rent. The tenant has also moved out while at the same time asserting that the tenancy should continue. I find that the tenant's application to cancel the 10 day Notice to End Tenancy should be dismissed and I grant the landlord an order for possession pursuant to the 10 day Notice to End Tenancy.

The landlord has claimed a monetary award for unpaid rent in the amount of \$465.00 for September and for October, but I find that the landlord has imposed an illegal rent increase because he has not given a proper form of Notice of Rent Increase in accordance with the provisions of the *Residential Tenancy Act*. According to the evidence provided by the tenant, he has paid the landlord \$473.00 rent for May, June, July and August so he has over paid the landlord \$92.00 for these four months.

I allow the landlord's claim for unpaid rent for September in the amount of \$450.00, but I allow his claim for half of October only because the tenant has already substantially moved out of the rental unit and the landlord may be able to re-rent the unit for part of the month of October. The total award to the landlord is the sum of \$675.00. From that I deduct the Tenant's \$92.00 rent overpayment for a total award to the landlord of

\$583.00. Because the landlord has not complied with the requirements of the Act with respect to rent increases and because the Notice to End Tenancy for cause has been set aside, I decline to award the landlord the filing fee for his application.

Conclusion

I have awarded the landlord the sum of \$583.00. I order that the landlord retain the \$225.00 security deposit that he holds in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$358.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

The tenant has been awarded \$92.00 in rent overpayments that has been set off against the monetary award to the landlord. The Notice to End Tenancy for cause was set aside, but not the Notice to End Tenancy for unpaid rent.

I grant the landlord an order of possession effective two days after service on the tenant. This order may be filed in the Supreme 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 09, 2014

Residential Tenancy Branch

