



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding West Hotel, 0955802 BC Ltd., 0750947 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, OPR, MNR, FF

Introduction

This was a hearing with respect to the tenant's application to cancel a Notice to End Tenancy for unpaid rent and of the landlord's application for an order for possession and a monetary order. The hearing was conducted by conference call. The tenant and the landlord's named representatives called in and participated in the hearing

Issue(s) to be Decided

Should the Notice to End Tenancy dated July 12, 2014 and the Notice to End Tenancy dated July 3, 2014, but served on August 3, 2014 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 a monetary award?

Background and Evidence

The rental unit is a room in the landlord's single room occupancy hotel in Vancouver. The Tenancy began in August, 2012. There has been a succession of dispute resolution proceedings with respect to this tenancy. I dealt with the tenant's application to cancel a one month Notice to End Tenancy and a 10 day Notice to End Tenancy for unpaid rent in a decision dated August 7, 2014.

The landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent dated July 12, 2014. The tenant testified that the Notice was posted to his door on July 14, 2014. The Notice alleged that the tenant failed to pay rent in the amount of \$525.00 that was due on July 1, 2014. At the hearing the landlord's representative said that the amount included unpaid rent from June in the amount of \$150.00 as well as unpaid rent for July. In the August 7th decision I found that the tenant deducted the amount of \$150.00 from his June rent in accordance with an earlier dispute resolution decision that authorized the tenant to make a one-time deduction of \$150.00 from his rent. The

landlord's representative did not explain why the Notice to End Tenancy dated Jul 12th claimed that there was unpaid rent in the amount of \$525.00. The tenant testified that he hand delivered a rent cheque in the amount \$425.00 to the landlord's manager, J.C. on July 2, 2014. He said that the manager immediately returned his cheque. She told the tenant that the landlord did not have to accept his cheque because he had already been evicted on June 2nd. The tenant replied to the manager that if the landlord wouldn't take the cheques then it would have to deduct the rent from the monetary award the tenant was granted on April 25th.

The Ministry of Employment and Assistance issued cheque to the landlord on behalf of the tenant in the amount of \$425.00 in payment of August rent. The cheque was left at the front desk of the rental property on July 31, 2014 and it was returned to the tenant under the door of the rental unit later that day. The tenant submitted copies of both cheques as evidence in support of his application. On August 3, 2014 the tenant received another 10 day Notice to End Tenancy; it was posted to the door of the rental unit. The Notice to End Tenancy was incorrectly dated July 3, 2014 and stated that the tenant had failed to pay rent in the amount of \$1,000.00 that was due on August 1, 2014. The tenant amended his application to dispute this Notice as well as the July 12th Notice.

The tenant testified that he was served with the landlord's application for dispute resolution by posting to his door on August 8, 2014, although the application was filed on July 28, 2014. The tenant submitted that it was not served within three days as required by the *Residential Tenancy Act*.

The landlord's representatives and witness denied that the tenant delivered any cheques in payment of rent for July or August. The landlord's representative alleged that the tenant was deliberately creating conflicts with the landlord was lying about the payment of rent as well.

Analysis

There has been a history of dispute resolution proceedings between the parties and the landlord has made numerous attempts to evict the tenant, both for cause and on the ground of non-payment of rent. Given the history, I find that it is unlikely that the tenant would have provided the landlord with grounds to end his tenancy by choosing to withhold the payment of rent. The landlord provided evidence in the form of copies of cheques in payment of July and August rent. I accept and prefer the tenant's evidence to that of the landlord's representatives and I find that the tenant did tender payment of rent for the months of July and for August and that the payments were improperly refused and returned by the landlord. I find that there is no basis for the 10 day Notices

to End Tenancy dated July 12, 2014 and July 3rd, 2014, but issued in August, 2014. The Notices to End Tenancy are cancelled and the tenancy will continue.

The tenant is entitled to proceed with enforcement of monetary orders in his favour or deduct the amounts from rent until they are satisfied. At the hearing the landlord's representative said that the landlord will accept the tenant's payments of rent if new cheques are issued.

Conclusion

I have set aside the Notices to End Tenancy and the landlord's application is dismissed. With respect to the landlord's claim for a monetary award, I have found that the tenant tendered payment of the appropriate amount of rent for July in the amount of \$425.00 and it was rejected. The tenant has agreed to have new cheques issued to the landlord and it will be up to the landlord to accept and negotiate them. As he has requested in past applications, the tenant sought payment of a monetary award as compensation for what he claims to be harassment, intimidation and loss of quiet enjoyment caused by the landlord's tactics. The tenant also requested that administrative penalties be imposed against the landlord. I have no authority to assess administrative penalties and the tenant's request that I should do so is denied.

I find that the Notices given by the landlord and the conduct of the landlord's representatives surrounding the giving of these Notices constitutes harassment of the tenant that has interfered with his quiet enjoyment of the rental unit. I find that the tenant is entitled to compensation for this harassment and loss of quiet enjoyment. The tenant requested payment of the sum of \$250.00, but I find a more modest award is appropriate; I award him the sum of \$100.00 and I grant the tenant an order under section 67 in the said amount. This order may be registered 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 14, 2014

Residential Tenancy Branch

