



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT, FF, 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.

I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenant by personal service to an adult person who apparently resides with the tenant on October 6, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was sufficiently served on the tenant by mailing, by registered mail to where the tenant resides on October 17, 2014. I find that the Application for Dispute Resolution filed by the tenant was personally served on the landlord on October 21, 2014.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated October 6, 2014?
- b. Whether the tenant is entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?
- f. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The landlord and SJL entered into a written tenancy agreement that provided the tenancy would start on April 1, 2007 and continue on a month to month basis. The rent was \$685 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$342.50 at the start of the tenancy.

LMH moved into the rental unit a few months after the tenancy commenced. In 2009 SJL moved to Manitoba and she has not returned. LMH continued to pay the rent. The landlord has served 3 Notices of Rent Increase in accordance with the Act. The present rent is \$755 per month payable in advance on the first day of each month.

LMH has failed to pay the rent for the months of September (\$755 is owed), October (\$755 is owed) and November (\$755 is owed) and the sum of \$2265 remains outstanding. LMH continues to reside in the rental unit.

Tenant's Application:

I do not accept the tenant's submission that he is not obliged to pay the rent as his name is not on the written tenancy agreement. I determined the written tenancy agreement came to an end when SJL vacated the rental unit, both parties had notice of it and LMH continued to pay the rent to the landlord. At that time LMH became the sole tenant. He has paid the rent for the last 5 years.

The tenant LMH testified he did not pay the rent because the landlord refused to compensate him for lawn cutting, tree trimming and maintenance for the last six years.

He also submitted the landlord failed to repair a leaky drain pipe and water in entering the suite.

Section 26(1) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I determined the tenant did not have a legal right to withhold the rent. I further determined the 10 day Notice to End Tenancy is valid and there is no basis to cancel the Notice. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. The tenancy will come to an end in accordance with the Notice.

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Further, I dismissed the tenant's application for a reduction of rent for repairs, services or facilities agreed upon but not provided. There is no evidence that the landlord agreed with LMH that he would compensate the tenant for the work the tenant is now claiming. The landlord objected to the tenant trimming the trees as he did not give the tenant permission to do so. The tenants claim including the claim to recover the cost of the filing fee is dismissed without liberty to re-apply.

Landlord's Claim - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant's application to set aside the 10 day Notice to End Tenancy has been dismissed. **Accordingly, I granted the landlord an Order for Possession on 2 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 September (\$755 is owed), October (\$755 is owed) and November (\$755 is owed) and the sum of \$2265 remains outstanding. **I granted the landlord a monetary order in the sum of \$2265 plus the sum of \$50 in respect of the filing fee for a total of \$2315.**

Security Deposit

I determined the security deposit plus interest totals the sum of \$351.81. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1963.19.

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: November 24, 2014

Residential Tenancy Branch

