



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, 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. The hearing was originally set for February 6, 2015. However, the hearing was not able to proceed on that date and the matter was adjourned to March 11, 2015. 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 personally served on the Tenant on January 13, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides. The landlord lives in the United States. The package did not arrive at the landlord's residence until 7 days before the hearing.

The tenant expressed concerns about being denied access to the rental unit. On February 6, 2015 I issued an interim order dated February 6, 2015 outlining the reasons for the adjournment and stating the tenant was entitled to possession of the rental unit subject to the completion of the Residential Tenancy Act process and any contrary order that might be given by the police.

The tenant provided evidence that he was denied access and on February 18, 2015, after an ex parte application, Mr. Justice McEwan made an order pursuant to the interim

decision referred to above and “pending a further determination from the Residential Tenancy Branch as to the rights and interests of the parties between now and when the matter is expected to be heard between March 11, 2015 and March 13, 2015, the plaintiff is entitled to possession of the residential premises located at...”

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 January 13, 2015?
- b. Whether the tenant is entitled to an order allowing the tenant 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?

Background and Evidence

Much of the evidence between the parties is in dispute. The tenant testified the tenancy began on March 1, 2012. The landlord testified the tenancy began on June 1, 2012. There is a dispute as to whether a deposit was paid. The parties agree the rent was \$1500 per month. However, there was testimony that the rent was reduced.

The tenant provided evidence that he entered into a 2 year fixed term written tenancy that provided that the tenancy would start on June 1, 2013 and end on June 1, 2015. The landlord testified that in the summer and fall of 2014 the tenant was having a difficult time paying the rent and the parties orally agreed to end the fixed term tenancy agreement. The landlord entered into a fixed term tenancy agreement with 4 others that provided that the tenancy would start on October 1, 2014 and end on May 1, 2015. He testified he persuaded the 4 new tenants to allow the applicant to live in the rental property. In January there was an incident involving the applicant and the four new tenants demanded that the applicant vacate the rental unit.

The applicant disputes the evidence of the landlord. He takes the position that he never agreed to end his fixed term tenancy and that it takes precedent over the lease between the landlord and the 4 new tenants. The tenant acknowledged he has not paid the full rent to the landlord. However, he testified the landlord owes him approximately \$15,000 for property management services and cleaning of other suites which the landlord stated could be applied to the outstanding rent. The landlord strongly disputes this allegation and testified he never hired the tenant as a property manager and he does not owe him anything in management fees.

Both parties raise claims that are disputed by the other. The tenant alleged he was entitled to \$15,000 in property management fees and he is entitled to damages for being denied access to the rental unit. The landlord alleged the tenant owes him over \$5000 in outstanding rent.

Settlement:

Section 63 of the Residential Tenancy Act provides as follows:

Opportunity to settle dispute

- 63** (1) The director may assist the parties, or offer the parties an opportunity, to settle their dispute.
- (2) If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.

At the end of the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

- a. The parties mutually agree to end the tenancy on March 11, 2015 and they ask the arbitrator to issue an Order for Possession for that date.
- b. The landlord shall pay to the tenant the sum of \$2000 on March 11, 2015.
- c. This is a full and final settlement and each party releases and discharges the other from all further claims with respect to this tenancy.

- d. The settlement is conditional on the landlord paying the tenant the sum of \$2000 on March 11, 2015 and the tenant vacating the rental property on that date.

Both parties confirmed they were in agreement with the settlement after it was repeated to them on the conference call. As a result of the settlement I granted an Order for Possession effective March 11, 2015.

The tenant has advised me by fax that the money has been paid. As a result it is no longer necessary to issue a monetary order.

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.

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: March 11, 2015

Residential Tenancy Branch

