



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNDC, MNSD, FF
CNR, CNC, MNDC, OLC, PSF,

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for cancellation of a notice to end tenancy for unpaid rent / cancellation of notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / and an order instructing the landlord to provide services or facilities required by law.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

This appears to be the fourth hearing in the ongoing dispute(s) between these parties. There is no written tenancy agreement in evidence for the tenancy which is understood to have begun on or about January 01, 2012. Monthly rent of \$600.00 is due and payable in advance on the first day of each month. While a security deposit of \$600.00 was collected, the parties testified that it was repaid to the tenant some time ago.

As provision of internet is at issue in the tenant's current application, I note now that in a previous hearing held on October 30, 2014, by decision of that same date another Arbitrator found that "the provision of internet was not a term of the tenancy agreement."

The landlord issued a 10 day notice to end tenancy for unpaid rent dated March 20, 2015. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is March 31, 2015. The amount of rent shown as unpaid when due on March 01, 2015 is \$600.00. Thereafter, the tenant made no further payment toward rent and he continued to reside in the unit.

The landlord issued a second 10 day notice dated April 10, 2015. A copy of the notice was submitted in evidence. The date shown by when the tenant must vacate the unit is April 20, 2015. The amount of rent shown as unpaid when due on April 01, 2015 is \$1,200.00. Thereafter, the tenant has made no payment toward rent for March (\$600.00), April (\$600.00) or May (\$600.00) 2015, and he continues to reside in the unit.

There is no evidence that the landlord has either recently issued a 1 month notice to end tenancy for cause, or that the landlord seeks an order of possession on the basis of such a notice having been issued.

Analysis

Based on the documentary evidence and testimony the various aspects of the respective applications and my related findings are set out below.

LANDLORD

Order of possession for unpaid rent

I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated March 20, 2015, and a second 10 day notice dated April 10, 2015. While the tenant filed an application to dispute a notice to end tenancy for unpaid rent on March 30, 2015, he has made no payment towards rent for March, April or May 2015.

Section 26 of the Act addresses **Rules about payment of rent and non-payment of rent**, in part:

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.

In the absence of any evidence that the tenant had a right under the Act to deduct all or a portion of the rent due for March, April or May 2015, following from all of the foregoing, the tenant's application for cancellation of a notice to end tenancy for unpaid rent is dismissed, and I find that the landlord has established entitlement to **an order of possession**.

\$1,800.00: (3 x \$600.00) unpaid rent for March, April & May 2015

Following from the above, I find that the landlord has established entitlement to compensation for unpaid rent as claimed.

\$50.00: *filing fee*

As the landlord has succeeded with the principal aspects of his application, I find that the landlord has also established entitlement to recovery of the full filing fee.

Again it is noted that the security deposit has already been repaid to the tenant.

Total entitlement: \$1,850.00

TENANT

Cancellation of a notice to end tenancy for cause

As there is no evidence that the landlord has either recently issued a 1 month notice to end tenancy for cause, or that the landlord seeks an order of possession on the basis of such a notice having been issued, this aspect of the tenant's application is dismissed.

Cancellation of a notice to end tenancy for unpaid rent

As set out above, I find no evidence that the tenant has a right under the Act to deduct all or a portion of the rent due for March, April or May 2015, and the tenant's application for cancellation of a notice to end tenancy for unpaid rent is therefore dismissed.

\$5,000.00: *loss of wages*

\$200.00: *loss of wages for March 21, 2015*

The tenant testified that wages allegedly lost arise mainly from the landlord's failure to provide access to internet. However, as previously noted, another Arbitrator determined that provision of internet was not a term of the tenancy agreement. Accordingly, I find that this aspect of the application must be dismissed.

\$100.00: *costs incurred for travel and preparation of documents*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not

provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the tenant's application is hereby dismissed.

Order instructing the landlord to comply with the Act, Regulation or tenancy agreement
Order instructing the landlord to provide services or facilities required by law

In the absence of sufficient evidence that the landlord is not complying with the Act, Regulation or tenancy agreement, or not providing services or facilities required by law, these aspects of the tenant's application are hereby dismissed.

Conclusion

The tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby issue an **order of possession** in favour of the landlord effective not later than **May 31, 2015**. This order must be served on the tenant. 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,850.00**. Should it be necessary, this order may be served on the tenant, filed 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: May 11, 2015

Residential Tenancy Branch

