



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, MNDC 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 one month Notice to End Tenancy was personally served on the Tenant on April 28, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated April 28, 2015?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on October 1, 2008 when the parties entered into a month to month tenancy that provided the rent was \$900 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$450 on August 28, 2008. The tenancy agreement

provided that the tenant(s) would pay rent of \$1000 per month payable on the first day of each month. The present rent is \$1075 plus \$30 for parking.

Application to Cancel the one month Notice to End Tenancy:

The landlord testified that at the request of the tenant they agreed to cancel the one month Notice to End Tenancy dated April 28, 2015 and replaced it by a Notice to End Tenancy dated May 22, 2015 that provided the tenancy would end on June 30, 2015. The parties have mutually agreed to end the tenancy on June 30, 2015.

As a result I ordered that the tenancy shall end on June 30, 2015 and I granted and Order for Possession effective that date.

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.

Application for Monetary Order:

The tenant sought a monetary order for the equivalent of one month rent for the reduced value of the tenancy caused by the landlord's failure to fix the bathroom fan in a timely fashion. The Application for Dispute Resolution states he was without a bathroom fan for 14 months. He found this humiliating and embarrassing and it affected his life on a daily basis. He testified he is uncertain of the exact dates but he based his claim on the following:

- The present landlord took over the ownership of the building in the middle of 2011.
- The landlord produced a Condition Inspection Report dated July 28, 2011 in which there is no mention of a broken fan.
- The tenant testified an inspector on behalf of the landlord conducted an inspection some time later and noted the broken fan. No one has a copy of that inspection and it was not the present building managers who conducted it.
- The present building managers took over their responsibilities 2 to 3 months later. The tenant testified he told the manager of the broken fan. He did not give the landlord notice in writing as he was told not to.

- The building manager testified he has not recollection of being told of a problem with the fan. RT, the second building manager testified all tenants were told to put maintenance requests in writing. The tenant denies this.
- The landlord produced a copy of a suite inspection that took place on August 28, 2012 that indicates the bathroom fan was broken. There is an invoice from the manager indicating the bathroom fan was fixed on September 21, 2012.
- There is an inspection report dated October 17, 2013, April 17, 2014 and January 27, 2015 in which there is no notation of a problem with the fan.
- The tenant acknowledged the fan worked after it was repaired in September 2012 and has been working ever since..

Analysis:

I determined the tenant failed to prove he was without a functioning bathroom fan for 14 months as alleged in his Application for Dispute Resolution based on the following:

- The tenant has the burden of proof to establish his claim on a balance of probabilities.
- The tenant acknowledges that he did not keep a record of dates and he is uncertain as to exactly when the fan stopped working.
- The tenant did not put the maintenance request in writing.
- It is worth noting that the tenant did not bring a claim against the landlord until over 2 ½ years after the fan was repaired.
- The tenant alleged he was humiliated and embarrassed by not having a functioning fan but failed to produce sufficient evidence to corroborate this testimony.

However I determined the tenant orally advised the building manager of the problem and the landlord failed to make the repairs in a timely way. I determined the tenant is entitled to \$150 compensation based 3 month delay multiplied by \$50 per month based on the following:

- I determined the tenant orally advised the building manager of the problem. The building manager had many different jobs and it is easy to see how he might not remember all requests given to him.
- However, the tenant failed to provide a sufficient explanation as to why he failed to put the request in writing or why, after the repairs were not made in a timely manner he did not come back to the landlord with maintenance request in writing.

- I determined the tenant failed to sufficient mitigate his loss by bringing an Application to the Residential Tenancy Branch for a repair order in a timely manner if the landlord continued to refuse his request to make the repairs.
- I determined there was some discomfort and unpleasantness leading to a reduction in the value of the tenancy caused by the lack of a functioning fan.
- I determined that had the tenant been diligent the fan would have been fixed in a maximum of 3 months.

In the circumstances I determined the tenant is entitled to \$150 in compensation.

In summary I ordered the landlord to pay to the tenant the sum of \$150 plus \$25 (reduced to reflect the limited success of the tenant) for a total of \$175.

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: June 23, 2015

Residential Tenancy Branch

