



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, LAT, MNDC, MNR, MT, RR, 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 posting on May 6, 2015. I find that the one month Notice to End Tenancy was sufficiently served on the tenant by posting on May 8, 2015. I find that the Application for Dispute Resolution filed by the tenant was sufficiently served on the landlord by mailing, by registered mail to where the landlord carries on business on May 25, 2015. I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was sufficiently served on the tenant by mailing, by registered mail on June 3, 2015

Preliminary Matter:

The tenant checked off the box in the Application for Dispute Resolution that he was seeking to cancel a Notice to End Tenancy for landlord's use of the rental property. No such Notice was issued. The tenant did not check of the box that was immediately below indicating he was seeking an order to cancel the Notice to End Tenancy for non-payment of rent. I ordered that the Application for Dispute Resolution filed by the tenant be amended to delete the application to cancel a notice for landlord's use and to include an application to cancel the Notice to End Tenancy for non-payment of rent.

Issue(s) to be Decided:

The issues to be decided are as follows:

1. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy for non-payment of rent dated May 6, 2015?
2. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy for cause dated May 8, 2015?
3. Whether the tenant is entitled to an order for the cost of emergency repairs?
4. Whether the tenant is entitled to an order authorizing the tenant to change the locks?
5. Whether the tenant is entitled to an order allowing the tenant to reduce rent for repairs, services, or facilities agreed upon but not provided?
6. Whether the tenant is entitled to a monetary order?
7. Whether the landlord is entitled to an Order for Possession?
8. Whether the landlord is entitled to A Monetary Order and if so how much?
9. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
10. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on February 1, 2012 and continue on a month to month basis. The rent is \$850 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$425 on January 17, 2012.

At the end of February 2012 the tenant made a request for parking and signed a contract agreeing to pay \$25 per month commencing March 2012. The tenant paid the \$25 charge from March 2012 to January 2015.

In February the tenant stopped paying the parking charge of \$25 per month.

On May 6, 2015 the landlord served a 10 day Notice to End Tenancy for non-payment of the \$25 a month parking charge alleging that sum of \$100 is owed.

The tenant went to the landlord's rental unit in an agitated state yelling, screaming and pounded on the door. This resulted in the landlord serving a one month Notice to End Tenancy on the tenant by posting on May 8, 2015.

The grounds set out in the one month Notice to End Tenancy state "The tenant or person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord."

Briefly, the relevant evidence presented by the landlord is as follows:

- SL the building manager testified she posted the 10 day Notice to End Tenancy on the front door to the tenant's rental unit on May 7, 2015. Later that evening the tenant freaked out and stormed to her rental unit. She was not home at the time. She received a telephone call from her 14 year old son that someone was pounding on the door and screaming at her.. The police were called.
- The landlord's 14 year old son did not testify. However he provided a letter outlining the incident. The tenant pounded on the door, yelling and screaming. He phoned his mother who called the police. The letter indicates he felt scared and threatened. Things calmed down by shortly after the tenant returned yelling and screaming again. His mother and the police arrived a short time later. The tenant was told to stay away. For several days later he could hear the tenant threatening his mother saying that he was going to call her boss, that she was a loser and following her with a camera.
- SL the building manager testified that she heard the tenant make threats that "he was going to make her life miserable" and homophobic comments. She testified the tenant was given a warning letter about criminal harassment.
- SS, the Property Manager submitted the tenant's application should be dismissed for failing to file within the appropriate time period.
- The landlords testified the tenant has failed to take down his enclosure as required by the Fire Marshalls letter dated May 13, 2015.
- A tenant who lived downstairs wrote a letter stating he was leaving at the end of May to move in with his daughter because the tenant and his children were making too much noise at all time of the day and night.

The tenant testified as follows:

- He does not have to pay the additional \$25 per month as he was using the parking pass to gain access to the rental unit for he and his scooter. He testified he is physically disabled and needs a scooter.
- He is taking care of his 2 your children.
- He disputes the one month Notice to End Tenancy stating he has not down anything wrong.
- He testified this is an act of reprisal on behalf of the landlord as he has been an outspoken advocate for change in the building.
- He denies that his enclosure violates any orders or directives from the Fire Marshall's office.
- The tenant expressed a desire to work together with the landlord and work peacefully with the landlord.

Analysis:

The tenant has attempted to frame this as the landlord's attempt to evict him because of his outspoken advocacy within the building. I disagree. This is a situation where the Notices to Ended were given because of the tenant's misconduct.

Application to Cancel the 10 day Notice to End Tenancy dated May 6, 2015:

In 2012 the tenant agreed to pay the landlord \$25 a month for parking. He signed a contract to this effect and paid this sum for over 2 years. The tenant may or may not have a right to receive accommodation from the landlord because of a disability. However, the tenant does not have a right to unilaterally stop paying a sum he has agreed to pay until he has first requested an accommodation from the landlord and has been given that accommodation. Once a request has been made the landlord would have the right to ask for information from the tenant which would verify that he has a disability and whether accommodation should be granted. If there is a disagreement at that stage the either party has the right to make an appropriate application to have the matter resolved.

In my view the tenant is bound to continue to pay the \$25 charge until he has been granted an accommodation or an arbitrator has determined he is not required to pay it. The tenant must first make the request to the landlord and if required provide sufficient medical evidence to establish that an accommodation is warranted.

As a result I determined the landlord is entitled to a monetary order in the sum of \$100 being the \$25 charge for parking for February, March, April and May.

However, in my view the \$25 charge is not rent. The agreement signed by the parties is separate from the tenancy agreement that deals with rent. The agreement does not describe the charge as rent. As a result I determined that while the landlord is entitled to a monetary order for the charge, the landlord does not have the right to end the tenancy for non-payment of rent. Accordingly, I order that the 10 Notice is End Tenancy is set aside.

The landlord submitted the tenant failed to file his application within the time period. It is not necessary for me to consider this as the Notice to End Tenancy alleging non-payment of rent is of no force and effect as the charge does not refer to rent. .

Application to Cancel the one month Notice to End Tenancy:

The one month Notice to End Tenancy provides the tenant must file an Application for Dispute Resolution within 10 days of receiving the Notice. The Notice was served by posting on May 8, 2015. The Act provides that it is deemed received 3 days later. The tenant testified he was in the Residential Tenancy Branch office on Friday, May 22, 2015 but was not permitted to file because it was at the end of the day. Thus the Application for Dispute Resolution seeking to cancel the one month Notice to End Tenancy would have been late even if it had been filed on Friday, May 22, 2015.

The Act permits an arbitrator to extend the time for filing in exception circumstances. Policy Guideline #36 includes the following in determining whether exceptional circumstances when considering whether to grant an extension of time.

“The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party

- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances”

I determined the tenant did not wilfully fail to comply with the relevant time limit. I determined there is merit to considering the tenant’s application. I determined reasonable and appropriate steps were taken to comply with the relevant time period. I determined the landlord has not been prejudiced as the Application was filed within a couple days after the time period. In the circumstances I determined that exceptional circumstances existed and the tenant should be given more time to file his application to May 25, 2015.

When determining whether a landlord has sufficient cause to end the tenancy under a one month Notice to End Tenancy an arbitrator must consider the evidence up to and including the date of the Notice to End Tenancy. An arbitrator is not permitted to consider conduct after that date. To do otherwise would result in the denial of natural justice as the tenant would not be notified of the case that he has to meet.

As a result I cannot consider the following:

- There is a dispute between the parties as to whether the tenant has complied with a City of Vancouver Fire Department Notice of Violation dated May 13, 2015. The Notice was given for all of the units and not specifically related to the tenant’s unit. The tenant stated he talked to the fire department officials and they were satisfied with his unit. The landlord disputes this. Neither party presented sufficient evidence from the Fire Department to establish their case. In any event that relates to a situation that occurred after the date of the Notice and cannot be considered as part of this hearing.
- The incident which prompted the landlord to serve the 2 month Notice to End Tenancy occurred on May 7, 2015. The two month Notice was served on May 8, 2015. The landlord made allegations that the tenant has continued with a calculated attempt to harassment and intimidation after that date. For example there is an allegation in the materials filed by the landlord that the tenant telephoned the Ministry of Family Services making a complaint landlord's care of the tenant's son. I cannot use that as a factor in my decision as the Ministry would not verify who they received the complaint from. Such alleged conduct and other incidents that occurred after the date of the Notice to End

Tenancy cannot be considered in determining whether there is sufficient grounds in the one month Notice dated May 8, 2015.

- Any other allegation of misconduct that occurred after May 8, 2015.

The one month Notice to End Tenancy alleges "The tenant or person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord."

I accept the evidence presented by the landlord that the tenant yelled, screamed and pounded on the landlord's door on May 7, 2015 after receiving the 10 day Notice to End Tenancy that was posted by the landlord. I do not accept the testimony of the tenant that he has done nothing wrong. It further determined that the tenant returned after initially calming down and continued to yell and scream and pound on the door. This behaviour is totally inappropriate and without justification. It may be that the tenant was not aware that the landlord's 14 years old son was alone in the landlord's rental unit. However, that is not an excuse.

This is a very difficult case. While I have determined the conduct of the tenant on May 7, 2015 is totally inappropriate and inexcusable it is another question to determine whether the landlord has sufficient grounds to end the tenancy. The landlord has the burden of proof to establish sufficient caused based on a balance of probabilities. All of the circumstances must be considered. The landlord did not present evidence to establish that the tenant has engaged in intimidation and abusive behaviour prior to that date. The incident did not result in physical violence although it was unreasonably close t that. The police responded appropriately on May 7, 2015 and the incident was diffused. SL was not present when the incident started and could not give first hand testimony as to exactly how threatening the situation was. The other witnesses to the incident did not attend the hearing and give first hand testimony. I cannot consider allegations of harassment and intimidations occurring after the date of the Notice to End Tenancy. In the circumstances I determined the landlord failed to satisfy the burden of proof that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord produced the letter from a previous tenant which stated he was leaving to live with his daughter because the tenant and his children who live upstairs caused too much noise. The

previous tenant did not testify. The tenant testified he worked out an agreement with the previous tenant and was never told of the problem. It is not possible in the absence of the first hand testimony of the previous tenant to determine whether there is sufficient ground based on his complaint. As a result I ordered that the one month Notice to End Tenancy dated May 8, 2015 be cancelled.

Tenant's Application to recover the cost of emergency repairs?

I dismissed the tenant's application to recover the cost of emergency repairs as the tenant failed to present sufficient evidence to establish this claim.

Tenant's Application for an order authorizing the tenant to change the locks?

I dismissed the tenant's application for an order authorizing the tenant to change the locks as the tenant failed to present sufficient evidence to prove the landlord was improperly entering the tenant's rental unit.

Tenant's Application for an order allowing the tenant to reduce rent for repairs, services, or facilities agreed upon but not provided?

I dismissed the tenant's application for an order to reduce the rent for repairs, services or facilities agreed upon but not provided as the tenant failed to prove this claim.

Tenant's Application for a Monetary Order:

With regard to each of the tenant's claims for a monetary order I find as follows:

- a. I dismissed the tenant's claim of \$675 to recover the parking charge for the period October 2012 to December 30, 2014 for the reasons set out above. The tenant has not requested an accommodation. The tenant is obliged to continue to pay that charge as he agreed to pay until he first request and is subsequently granted an accommodation. If there is a dispute as to whether an accommodation is warranted either party has the right to make an application for that determined.
- b. The tenant made a number of claims relating to the cost of preparing for litigation. The only jurisdiction an arbitrator has relating to costs is the costs of the filing fee (which the tenant has not claimed). As a result I dismissed the tenant's claims as follows:
 - London Drugs photos - \$26.25

- G & G Printers - \$98.25
 - London Drug photos - \$15.78
 - Registered mail (\$45.36), envelopes (\$1.66) , GNG printing costs (\$84.80), GNG printing final bills (\$4.30), Superstore photo development (\$37.23), Superstore Photo Develop (\$22.61), London Drug Photo Develop (\$5.19, \$9.42, 2.50), GNG printing (\$18.93), Registered mail to Boundary (\$11.34), GNG Printing (no harassment and security privacy - \$74.30).
- c. The tenant claimed the sum of \$260 for the cost of 2 tarps and roof labour (18 months maintenance). The tenant testified he is a tradesperson and he fixed leaks in his roof. This claim would appear to be inconsistent with the claim he is disabled. In any event I accept the testimony of the landlord they would never agree to a tenant working on the roof. The tenant did not obtain the agreement or approval of the landlord. The tenant failed to prove this claim and as a result this claim is dismissed.
- d. I dismissed the tenant's claim of \$200 for cross contamination and the cost of labour when the landlord dealt with a bedbug problem two years ago. The tenant failed to prove this claim.
- e. I dismissed the tenant's claim of \$80 for the cost of two space heaters purchased three years ago as the tenant failed to provide receipts to prove he incurred this cost.
- f. The landlord has the obligation to provide heat for the rental unit. The tenant claimed reimbursement of \$90 for the increase in hydro costs for 3 summer months. The landlord shuts off the boiler which heats the rental unit 4 to 5 months and the tenant heats the rental unit when necessary through the use of space heaters. The landlord testified it is too hot in the summer to have the boiler continue to operate. The tenant testified that it is very cold on some nights. The tenant must pay the additional electrical charge. He further testified he does not have an air conditioner or fan. I accept the tenant's submission that there is an additional cost incurred in heating the rental unit during those evenings that are cold. The tenant produced some but not all of his electrical bills during the last couple of years. It is impossible to determine the additional cost with precision. I determined the tenant is entitled to nominal damages in the sum of \$50 for the cost of heating the rental unit during the summer months of 2014.

In summary I determined the tenant has established a claim against the landlord in the sum of \$50.

Landlord's Application - Analysis - Order of Possession:

For the reasons set out above I have ordered that the 10 day Notice to End Tenancy dated May 6, 2015 and the one month Notice to End Tenancy dated May 8, 2015 be cancelled. As a result I ordered that the application of the landlord for an Order for Possession be dismissed.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay a \$25 parking charge for the months of February, March, April and May and the sum of \$100 is owed. I determined the landlord is entitled \$100 plus the sum of \$50 in respect of the filing fee for a total of \$150.

The tenant has established a claim against the landlord in the sum of \$50. The landlord has established a claim against the tenant in the sum of \$150. After setting off one claim against that of the other I ordered the tenant to pay to the landlord the sum of \$100.

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: July 11, 2015

Residential Tenancy Branch

