



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF, OPR, MNR & 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 personally served on the Tenant on June 5, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was personally served on the Tenant on June 19, 2015. I find the Application for Dispute Resolution filed by the tenant 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 10 day Notice to End Tenancy dated June 5, 2015?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to A Monetary Order and if so how much?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began approximately 15 years ago. The landlord at that time was the father of the present landlord. Neither party produced a written tenancy agreement. The present rent is \$500 per month. The tenant testified he paid a security deposit of \$250. The landlord was uncertain as to whether a security deposit has been paid.

The tenant has failed to pay the rent for the months of May, June, July and August and the sum of \$2000 remains outstanding. The parties agreed that \$87 could be deducted from the rent for May to cover the cost of utilities that was to be paid by the tenant who moved out on October 1, 2014.

The tenant has withheld the rent alleging the landlord owes him money based as follows:

- \$1001.29 for hydro and gas for the upstairs rental unit
- \$733. for a Rotor Plumber dated September 14, 2012
- \$250 for the security deposit
- \$50 for the fee paid to the Residential Tenancy branch.

The upstairs rental unit was vacant from October 1, 2014 to January 15, 2015. The landlord testified the dispute between the tenant and the upstairs tenant arose when the tenant tried to charge the upstairs tenant a share of the hydro and gas for that period. The upstairs suite was unoccupied. The landlord testified the parties agreed the tenant would be fully responsible for the hydro and gas for that period. The tenant disputes this agreement. He complained the landlord was making repairs during this period and should be responsible for a share of the utilities. The landlord responded saying the renovations occurred prior to this date and no work was carried out at that time. The landlord further stated the tenant has already deducted the Rotor Plumber bill from the rent as agreed upon by the landlord's brother back in 2012.

Tenant's Application – Cancel the 10 day Notice to End Tenancy.

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.

The tenant did not have a right to withhold the rent. The Act requires that the tenant continue to pay the rent until he has obtained a monetary order which could be applied against future rent. Further the tenant does not have a legal right to unilaterally apply the security deposit to rent. As a result I ordered that the tenant's application to cancel the 10 day Notice to End Tenancy be dismissed.

Tenant's Application for a monetary order:

With respect to each of the tenant's claims I find as follows:

- a. The tenant claimed reimbursement of the bill to Rotor Plumbers in the sum of \$733. The invoice is dated September 14, 2012. I prefer the evidence of the landlord to that of the tenant when the landlord testified the tenant has already deducted this from the rent. The tenant failed to provide a satisfactory explanation why he would delay in making this claim.
- b. The tenant claimed the sum of \$1001.29 for the upstairs portion of the hydro and gas bills. I am satisfied that the tenant is entitled to compensation of some sort but it is impossible to determine from the evidence presented how much compensation is appropriate. I considered dismissing the tenant's claim without leave to re-apply on the basis the tenant failed to prove his claim. However, I determined it would be more appropriate to dismiss the tenant's claim with liberty to re-apply. This would give both parties the opportunity to approach the utility companies and get the statement of accounts so the actual amount can be determined. The landlord stated the accounts have been put into his name as of June 1, 2015 and the tenant owes money to them for the last two months. As a result I ordered that the tenant's application for the upstairs portion of the utility bills be dismissed with liberty to re-apply.
- c. I dismissed the claim for the security deposit. Section 38(1) of the Residential Tenancy Act provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The tenant's application is premature. The tenant has the right to re-apply provided he complies with the Act.

- d. I dismissed the claim to recover the cost of the filing fee as the tenant has not been successful with his claim.

Landlord's Application - Analysis - 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. The tenant stated he was leaving at the end of August. The landlord stated he was satisfied for an Order for Possession for that date. Accordingly, I granted the landlord an Order for Possession August 31, 2015..

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 May (\$413), June (\$500), July (\$500) and August (\$500) and the sum of \$1913 remains outstanding. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in

the Application for Dispute Resolution. I granted the landlord a monetary order in the sum of \$1913 plus the sum of \$50 in respect of the filing fee for a total of \$1963.

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: August 05, 2015

Residential Tenancy Branch

