



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR, CNC, OLC, FF

For the landlord: OPR, OPC, MNDC, MNR, MNSD, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) issued by the landlord, for an order cancelling a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) issued by the landlord, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession for the rental unit pursuant to the 10 Day Notice and the 1 Month Notice, for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and unpaid rent, for authority to keep all or part of the tenant’s security deposit, and a monetary order for money owed or compensation for damage or loss, alleged damage and for recovery of the filing fee paid for this application.

The tenant, the landlord, and the landlord’s agent/assistant attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the beginning of the hearing, neither party raised an issue regarding service of the other’s evidence or application.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-

At the beginning of the hearing, the tenant confirmed that he had vacated the rental unit as of October 1, 2015, and therefore, there was no longer any need to consider the tenant's request seeking cancellation of the Notices or the landlord's request seeking an order of possession for the rental unit. The hearing proceeded on the landlord's application seeking monetary compensation for unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent?

Background and Evidence

The undisputed evidence showed that this tenancy began on March 1, 2013, ended on October 1, 2015, monthly rent was \$1100.00, and the tenant paid a security deposit of \$550.00, which has not been returned by the landlord to the tenant.

The landlord, through her agent, submitted that she delivered the tenant a letter, dated July 27, 2015, informing him that she had received a government order from the local district. The letter stated that the local district advised her to give the tenant a 60 day notice to vacate, and in this case, the landlord informed the tenant that the vacate date was October 1, 2015. The tenant submitted a copy of that letter and of the letter from the bylaw office of the local district, dated July 21, 2015 upon which the landlord's letter to the tenant was based. The letter from the bylaw office stated that the landlord had too many secondary suites and one had to be unoccupied.

The landlord submitted further that when she was informed this letter notice was the incorrect notice to give the tenant, she issued the tenant the 1 Month Notice instead, on August 17, 2015, listing an effective vacate date of October 1, 2015. A copy of that Notice was issued into evidence, and the cause listed that the rental unit had to be vacated to comply with a government order.

The landlord submitted further that she served the tenant with the 10 Day Notice on September 13, 2015, when he failed to pay rent for September. The 10 Day Notice listed an effective vacate date of September 24, 2015.

The landlord's application contained an amended monetary claim of \$2200.00; however, the landlord confirmed that her actual claim is \$1100.00, for unpaid rent for September 2015.

Tenant's response-

The tenant submitted that he was entitled to receive compensation equal to one month's rent, due to having received a 2 month notice from the landlord to vacate the rental unit. Further, the tenant submitted that he complied with the Act, as he provided the landlord notice with his August rent payment that he intended to vacate the rental unit as requested, by October 1, 2015, and in lieu of receiving the compensation equal to one month's rent, he would withhold the September rent in satisfaction.

Analysis

Landlord's application-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

In the case before me, I must consider whether the tenant owed rent or was entitled to compensation under the Act, as cited by the tenant.

Under section 49 of the Act, a landlord may issue the tenant a 2 Month Notice to End Tenancy for Landlord's Use of the Property for the reasons listed in this section. For informational purposes, compliance with a government order is not one of the listed uses.

Section 51 of the Act provides as follows:

(1) A tenant who receives a notice to end tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case, the landlord did not serve or issue such a 2 Month Notice pursuant to section 49 to the tenant; rather, the landlord served the tenant with a letter informing him she had to comply with a government order and therefore that he had to vacate by October 1, 2015.

Under the Act, a tenant cannot be compelled to vacate a rental unit at the written request of the landlord contained in a letter. The tenant therefore did not have to vacate the rental unit and I find that was his choice to give the landlord notice of his intent to vacate.

As to whether or not the landlord in fact received a government order, as was the cause listed on the landlord's 1 Month Notice, I was not required to consider that issue as the 1 Month Notice was no longer in dispute as of the day of the hearing.

As the tenant was not issued a 2 Month Notice, under section 49 of the Act, I find he is not entitled to any compensation under this section of the Act and was required to pay rent in accordance with his tenancy agreement.

I therefore find that the tenant was required to pay rent the last month of his tenancy, or September 2015, and as a result, I further find the landlord is entitled to unpaid rent of \$1100.00 for September 2015.

I also grant the landlord recovery of her filing fee of \$50.00.

I find the landlord is entitled to a total monetary award of \$1150.00, comprised of \$1100.00 for unpaid rent for September 2015 and the filing fee of \$50.00.

I direct the landlord to retain the amount of the tenant's security deposit of \$550.00 in partial satisfaction of her monetary award, and grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$600.00, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Tenant's application-

The tenant's request seeking cancellation of the Notices is dismissed, as the tenancy was over prior to the hearing.

The tenant's request for the landlord's compliance with the Act, I find, was in relation to requiring the landlord to provide the tenant with compensation equivalent to 1 month's rent. As I have determined that the tenant was not entitled to this compensation, I dismiss this portion of the tenant's application.

I likewise dismiss the tenant's request for recovery of his filing fee.

Conclusion

The portion of the parties' respective applications dealing with the 10 Day Notice and the 1 Month Notice is dismissed as the tenancy was over prior to the hearing.

The remaining portion of the landlord's application seeking unpaid rent and recovery of the filing fee is granted.

The remaining portion of the tenant's application seeking the landlord's compliance with the Act and his request for recovery of the filing fee is dismissed.

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: October 16, 2015

Residential Tenancy Branch

