



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF
 CNR, ERP, MNDC, RP, RR

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$4050 for unpaid rent
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated December 5, 2015
- b. A monetary order in the sum of \$3068
- c. An order that the landlord make emergency repairs for health or safety reasons
- d. An order that the landlord make repairs
- e. An order to reduce rent for repairs, services or facilities agreed upon but not provided.

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 December 5, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was served on the landlord by mailing, by registered mail to where the landlord resides. I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was served on the tenant by mailing by registered mail to where the tenant resides on January 7, 2016.

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 December 5, 2015?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided.
- d. Whether the tenant is entitled to an order for emergency repairs.
- e. Whether the landlord is entitled to an Order for Possession?
- f. Whether the landlord is entitled to A Monetary Order and if so how much?
- g. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- h. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

On October 1, 2013 the parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on October 1, 2013, continue for one year and become month to month after that. The rent is \$1350 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$675 at the start of the tenancy.

The tenant acknowledged he has failed to pay the rent for December 2015, January 2016 and February 2016 and the sum of \$4050. He testified that he withheld the rent because of the failure of the landlord to make needed repairs and to pay utilities which other tenants failed to pay. The tenant continues to reside in the rental unit although he stated he will be vacating the rental unit at the end of February.

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

I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy without liberty to re-apply. The landlord used the correct form. The tenant acknowledged he has failed to pay the rent. The law does not permit a tenant to withhold the rent in circumstances like this until they have first obtained an order for an arbitrator. 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 testified he was vacating at the end of February. I dismissed the tenant's application for emergency repairs and repairs as the tenancy is coming to an end.

Landlord's Application - 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 Notice to End Tenancy has been dismissed. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession. With the consent of the parties I set the effective date of the Order for Possession for February 29, 2016.

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.

Landlord's Application - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of December, January and February and October and the sum of \$4050 remains outstanding. I dismissed the claim for a \$30 late fee as the Residential Tenancy Act Regulations permit a late up to a maximum of \$25 only provided it is included in the tenancy agreement.

I determined the landlord a monetary order in the sum of \$4050 plus the sum of \$50 in respect of the filing fee for a total of \$4100.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$675. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$3425.

Tenant's Application for a Monetary Order:

Policy Guideline #1 includes the following statement:

SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable⁵ as defined in the Regulations.
2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

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

- a. The tenancy agreement provided that the tenant was to put the gas and hydro in his name and other tenants under a different tenancy agreement would pay a portion. The other tenants failed to pay their share. The landlord is responsible to the portion not paid by other tenants. I determined the tenant is entitled to \$164.60 for the other tenant's share of the Hydro bill for the period July 15, 2015 to September 1, 2015.
- b. I determined the tenant is entitled to \$344 for other tenant's share of the hydro bill for the period September 1, 2015 to November 1, 2015.
- c. The tenant claimed the sum of \$616.30 for a hydro bill for the period November 14, 2015 to January 13, 2016. The tenant has not paid this bill nor provided a copy of it to the landlord. This claim is not included in the Application for Dispute Resolution. I determined I cannot consider this claim in this application. The tenant has liberty to re-apply.
- d. The tenant claimed the sum of \$279.40 for a Fortis bill for the period August 2015 to January 12, 2016. The tenant has not provided this bill to the landlord. This claim is not included in the Application for Dispute Resolution. I determined I cannot consider this claim in this application. The tenant has liberty to re-apply.
- e. The tenant claimed the sum of \$2500 for the reduced value of the tenancy caused by excessive mold. The tenant blamed the mold on problems with the roof and leakage in the basement. The photographs indicate a serious mold problem. The tenant seeks compensation for 8 months. However, the tenant failed to mitigate his loss by filing an Application in a timely manner and only raised it with his application to cancel the Notice to End Tenancy when he was unable to pay the rent. The tenant failed to prove the problem is as serious as he has alleged. In the circumstances I determined the tenant is entitled to \$500 for the reduced value of the tenancy.

In summary I determined the tenant has established a claim against the landlord in the sum of \$1006.60.

Conclusion:

I granted an Order for Possession effective February 29, 2016. I determined the landlord has established a claim against the tenant in the sum of \$4100 including the cost of the filing fee. I ordered that the landlord retain the security deposit of \$675 leaving a balance of \$3425. I determined the tenant has established a claim against the landlord in the sum of \$1006.60. After setting off one claim against that of the other I ordered that the tenant pay to the landlord the sum of \$2418.40

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: February 02, 2016

Residential Tenancy Branch

