



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT; CNR; RR; FF

Introduction

This Hearing was convened to consider the Tenant's Application for Dispute Resolution seeking more time to make an application to cancel a notice to end tenancy; to cancel a Notice to End Tenancy for Unpaid rent issued December 16, 2015 (the "Notice"); a rent reduction; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing and were provided the opportunity to be heard, present evidence and to make submissions.

The Tenant testified that he mailed the Notice of Hearing documents to the Landlord, by registered mail, on or about December 24, 2015. The Tenant did not have a copy of the registered mail receipt and tracking numbers. The Landlord acknowledged receipt of the Notice of Hearing document.

The Landlord testified that he posted copies of his documentary evidence to the Tenant's door with a witness present. The Tenant acknowledged receipt of the Landlord's documentary evidence.

Preliminary Matters

The Tenant has applied for more time to make his application to cancel the Notice. The Tenant acknowledged receiving the Notice on December 17, 2015. The Tenant made his Application for Dispute Resolution on December 21, 2015, and therefore was within the 5 day time limit to make his Application. Therefore, this portion of his Application is not required and is dismissed.

Issues to be Decided

- Should the Notice to End Tenancy be cancelled?
- If so, is the Tenant entitled to a rent reduction?

Background and Evidence

Monthly rent is \$1,550.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$925.00 on July 20, 2014.

The Landlord provided the following testimony:

The Tenant did not pay all of the rent when it was due on November 1, 2015. In December, 2015, the Tenant paid \$900.00 towards November's rent and has not paid any rent for December, 2015, January, 2016 and February, 2016.

The Tenant provided the following testimony:

The Tenant acknowledged that he has not paid rent, as outlined by the Landlord. He stated that he has paid for repairs at the rental unit, including extermination of rodents and fleas. The Tenant stated that he has also paid for emergency repairs to "the pipes". He testified that he gave the Landlord two opportunities to make the emergency repairs to the pipes, but the Landlord did not make the repairs. The Tenant testified that he did not provide the Landlord with copies of receipts or repair orders in order to be reimbursed. The Tenant did not provide any such receipts or proof of emergency repairs made to the Residential Tenancy Branch.

Analysis

It is important to note that the Landlord provided documents in evidence that suggest that the Landlord feels he is entitled to a monetary award for unpaid rent and utilities. The Landlord has not made his own Application for Dispute Resolution and I advised the Landlord that he is at liberty to do so.

Section 26 of the Act states:

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.

I find that the Tenant did not have a right under the Act to deduct all or a portion of the rent. The Tenant may or may not have a valid claim for compensation from the Landlord, but at the time that the rent was due on December 1, 2015, I find that the Tenant had no right under the Act to deduct any rent. The Tenant's remedy would have been to follow the provisions of Section 33 of the Act with respect to emergency repairs, or to file an Application for Dispute Resolution prior to withholding rent and seek

an Order from the Director that he could deduct a portion of the rent or for compensation for damage or loss. I note that I have not found that the Tenant made emergency repairs, and if he did make emergency repairs the repairs would have to have cost at least \$5,300.00 (unpaid rent for November and December, 2015, and January and February, 2016).

Having found that the Tenant did not have a right under the Act to deduct any rent, I dismiss the Tenant's application to cancel the Notice. **I find that the tenancy ended on December 27, 2015**, and that the Landlord is entitled to an Order of Possession.

The tenancy has ended and therefore I dismiss the Tenant's application for a rent reduction. The Tenant is at liberty to apply for a monetary award or compensation for damage or loss.

The Tenant has not been successful in his Application and I find that he is not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Tenant's Application is **dismissed** in its entirety.

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Both parties remain at liberty to make Applications for monetary awards or compensation for damage or loss.

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 04, 2016

Residential Tenancy Branch

