



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON March 31, 2016
AT THE PLACES INDICATED.

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, OPC, OPR, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for:

- an Order of Possession for unpaid rent or cause pursuant to section 55;
- a monetary order for unpaid rent and damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's Applications for Dispute Resolution packages and each other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Should the landlord's 10 Day Notice to End Tenancy be cancelled?

Should the landlord's 1 Month Notice to End Tenancy be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is either the landlord or the tenant entitled to a monetary award for unpaid rent, damage or loss as a result of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in satisfaction of a monetary order?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

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This tenancy began on April 1, 2011 as a fixed term tenancy. To the date of this hearing, the tenancy has continued on a month to month basis. The rental amount of **\$950.00** is payable on the first of each month. The landlord testified that they continue to hold a \$450.00 security deposit paid by the tenant on March 9, 2011.

The landlord sought an Order of Possession. The landlord testified that, on December 23, 2015, the landlord posted two notices on the tenant's door; a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause. The landlord's 1 Month Notice indicated that the tenant is repeatedly late paying rent.

The tenant testified that his rent had been increased in 2012 and again in 2013 with no proper notice and form. The tenant acknowledged that he has paid the full increased amount of rent (**\$950.00**) until November 2015. The tenant did not dispute that he has not paid rent for the months of November, December 2015, January and February 2016. However, the tenant testified that he provided at least \$285.00 towards his rental arrears recently. The landlord's agent testified that the tenant paid an amount towards his outstanding arrears. The landlord's agent stated that she believed the tenant was issued a receipt indicating "for use and occupancy only" however the landlord testified

that she did not provide a receipt to the tenant. The landlord testified that she did not speak with the tenant at all with respect to his payment towards his outstanding rent.

The tenant claims that he has had two rent increases since the start of his tenancy. He also claims that he was not properly notified of these rent increases. The tenant submits that the amounts he has paid since 2012 above \$900.00 a month amount to overpayments. The tenant claims that he is entitled to \$1170.00 from November 2012 to present for overpayment of rent. He also claims that, although cablevision was included on his residential tenancy agreement, he has not had cablevision since December 15, 2012. Therefore, he believes he is entitled to a further monthly deduction of \$30.00 per month for a total of \$1080.00. Finally, the tenant sought to recover **\$1000.00** that he claims a friend of his paid to the landlord when the friend was staying with him for a period of time.

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The landlord originally sought \$2285.00. They sought to amend their claim at this hearing however they had not made a formal application for an amendment. The landlord's evidence with respect to the current outstanding amount was confusing. She and her agent initially provided testimony that the tenant owed 4 months' rent in their entirety. After testimony from the tenant, the landlord acknowledged receipt of payments but was unclear as to their total and indicated that she issued no receipts for the cash payments. The landlord's agent provided amounts owing according to her records but those amounts did not equate with the amounts provided by the landlord. The landlord was also unable to be clear about which months' rent was owed and the total amounts she had received from the tenant.

Analysis

When a tenant applies to cancel the notice to end tenancy the burden shifts to the landlord to justify the issuance of the notice to end tenancy. In this case, the tenant does not dispute that there are rental arrears. However, he submitted that his tenancy was reinstated as a result of the payments accepted by the landlord. And, further that he was not required to pay the full rental amount because of the unsanctioned rental increases over the course of his tenancy.

Section 26(1) of the *Act* establishes that “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.” Based on this provision and the evidence provided by both parties in this matter, I find that the tenant had no right to deduct all or a portion of his rent. Therefore, the landlord is entitled to an Order of Possession.

Furthermore, given that the tenant had paid the increased rental amount until November 2015 and that the landlord submitted copies of returned cheques in the amount of \$950.00 from the tenant, I do not find that it is likely the tenant intended to reduce or withhold a portion of his rent. I find that he was likely unable to pay, as evidenced by the returned cheques.

The tenant did not dispute that he continues to have rental arrears that total over two months’ rent. There was no evidence from the tenant that he believed his tenancy was reinstated by the partial payments that he made to the landlord. The landlord did not provide receipts nor did she provide any information regarding the limits of her acceptance of the tenant’s payments towards rental arrears. However, I note that the tenant did not argue or provide testimony to suggest that he believed the tenancy was reinstated. In fact, the tenant made an application to cancel the Notice to End Tenancy stating that he overpaid and intentionally withheld the rental amount.

I note that, as well as a 10 Day Notice to End Tenancy, the tenant was issued a 1 Month Notice to End Tenancy. The landlord provided undisputed testimony that the tenant was repeatedly late paying rent, particularly for the months of November, December, January and February. I find that the landlord has satisfied this ground of the Notice, justifying the end to this tenancy. Therefore, given all of the circumstances, I dismiss the tenant’s applications with respect to cancelling the 1 Month Notice to End Tenancy and issue an Order of Possession to the landlord based on that 1 Month Notice.

With respect to the landlord’s monetary application, the landlord did not provide an up to date accounting of unpaid rent by the tenant. Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the responding party with enough information to know the applicant’s case so that the respondent might defend him or herself.

I find that the landlord did not sufficiently set out the details of her monetary application in such a way that the tenant would have known the amount sought against him. Furthermore, I am unable to issue a monetary award when the amount owed to the landlord is uncertain and unproven. As such, I will not consider a claim by the landlord for a monetary order for unpaid rent at this time. I dismiss this portion of the landlord's application with leave to reapply. This decision to narrow the scope of the proceedings does not preclude the landlord from reapplying for the unpaid rent in a subsequent application.

The tenant claims that he has had two rent increases since the start of his tenancy. I find that the tenant did not provide sufficient evidence to suggest that he had, at some point, disputed the rental increases nor did the tenant apply to dispute the rental increases at this hearing. I find the tenant agreed to the rental increases and therefore, I do not find that the tenant is entitled to recover any portion of the rent he has paid since the outset of this tenancy. I dismiss the tenant's application with respect to the overpayment of rent.

The tenant also claims that he did not receive the benefits of cablevision as included in his residential tenancy agreement. However, he did not dispute the testimony of the landlord that the provision of cable was replaced with the provision of wifi. Therefore, I do not find that the tenant is entitled to a monthly rental deduction for lack of the provision of cablevision. I dismiss the tenant's application with respect to lack of cablevision services.

Finally, the tenant sought to recover **\$100.00** that he claims a friend of his paid to the landlord when the friend was staying with him for a period of time. I dismiss the tenant's application to recover **\$100.00** on behalf of another individual. The tenant has no standing to represent the interests of this unnamed third party.

As the landlord was partially successful in their application, I find the landlord is entitled to recover the filing fee for this application. The landlord will be permitted to deduct \$50.00 from the tenant's security deposit.

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Conclusion

I dismiss the landlord's request for a monetary order with leave to reapply.

I dismiss tenant's application in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order that the landlord be allowed to reduce the tenant's security deposit from \$450.00 **by** \$50.00 to recover the filing fee for this application.

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*.

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Dated: February 22, 2016

Residential Tenancy Branch