



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNDC, FF
Tenant: CNL, CNR, MNDC, RR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel 2 notices to end tenancy; a monetary order and a rent reduction.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing I confirmed with the tenant that the landlord never issued a 2 Month Notice to End Tenancy for Landlord's Use of Property in written format. The parties agreed that they had had a discussion about the fact that the landlord's daughter was going to move into the rental unit.

However, in relation to this Application I find that since a documented 2 Month Notice to End Tenancy for Landlord's Use was not issued to the tenant he does not have to seek to have it cancelled. I amend the tenant's Application to exclude cancelling a 2 Month Notice.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice for Unpaid Rent and the continuation of this tenancy are not sufficiently related to the tenant's claim for compensation and a rent reduction. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rest largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss the tenant's claim for compensation and a rent reduction. I grant the tenant leave to re-apply for these other claims under a new Application.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act* (Act).

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the Act.

Background and Evidence

The parties agreed the tenancy began in 2006 as a month to month tenancy for a current monthly rent of \$1,200.00 due on the 1st of each month.

The landlord submitted that after they had a discussion in November 2015 about the landlord's intent to have his daughter move into the rental unit the tenant advised him that he would not be paying rent for the month of January 2016 because he was entitled to a free month's rent because the landlord intended to have a close family member move into the rental unit.

The landlord further stated that when the tenant had not vacated the rental unit at the end of January 2016 the tenant advised him that he was having difficulty finding a new place to live. He stated that he would be staying in the rental unit but would not be paying rent because the landlord had failed to complete repairs in the rental unit leaving holes in the walls where piping had been replaced.

The landlord submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued February 7, 2016 with an effective vacancy date of February 17, 2016 due to unpaid rent in the amount of \$1,200.00.

The tenant confirmed that he has not paid any rent for the months of January, February, March, and April 2016. The tenant submitted that in March 2015 he began having problems with hot water in the rental unit and that because the landlord took so long to make repairs and that he had not completed the full repair (by closing up the walls) he determined that he should not have to pay any rent to the landlord. The tenant confirmed that he did not pay for any emergency repairs.

Analysis

Section 46 of the Act states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the Act.

Section 26 of the *Act* states 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 the right under this *Act* to deduct all or a portion of the rent.

The *Act* does allow, within very specific limitations, for a tenant to withhold rent from a landlord when the tenant themselves have had to make and pay for emergency repairs that the landlord has failed to complete. However, the *Act* does not give a tenant authority to withhold any rent for repairs that may or may not be incomplete.

Section 51 of the *Act* states that 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.

While I accept that the tenant believed that he had received a notice to end tenancy under Section 49 (2 Month Notice to End Tenancy for Landlord's Use of Property), as noted above, I found the landlord had never issued a documented 2 Month Notice. As the tenant never received such a notice I find that he was not entitled to the compensation allowed for under Section 51.

I also find the tenant has failed to provide any evidence that he had authority under any section of the *Act* that would allow him to withhold any rent amounts.

I have reviewed all evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on February 10, 2016 and the effective date of the notice is amended to February 20, 2016, pursuant to Section 53 of the *Act*.

I accept the evidence before me that the tenant failed to pay the rent owed in full.

As a result, I find the landlord has established sufficient grounds to end this tenancy.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$4,900.00** comprised of \$4,800.00 rent owed and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: April 05, 2016

Residential Tenancy Branch