



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, MNDC, MNSD, O, ERP, RP, PSF, LRE, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package in person on June 7, 2016. As such, I find that the landlord was properly served with the notice of hearing package in person on June 7, 2016 as per section 88 of the Act.

Both parties confirmed that the tenant served the landlord with his documentary evidence on June 30, 2016 and that the landlord served the tenant with his documentary evidence by placing it in the tenant's mailbox on June 26, 2016. As both parties have confirmed receipt of the submitted documentary evidence and neither party has raised any issues regarding the service of the documentary evidence, I am satisfied that both parties are deemed served as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the tenant clarified that he was cancelling the following portions of his application as they were made in error.

MNSD	Monetary Order for the return of all or part of the security deposit.
OLC	Order for the landlord to comply with the Act, regulation or tenancy agreement.
ERP	Order for the landlord to make emergency repairs for health or safety concerns
PSF	Order for the landlord to provide services or facilities required by law.

During the hearing the tenant also clarified that the remaining portions of the tenant's application were unrelated to the issue of unpaid rent (CNR).

MNR	Cost of Emergency Repairs
MNDC	for money owed or compensation for damage or loss
RP	Order for the landlord to make repairs to the unit, site or property
LRE	An order suspending or set conditions on the landlord's right to enter the rental unit.

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that the tenant has applied for:

MNR	Cost of Emergency Repairs
MNDC	for money owed or compensation for damage or loss
RP	Order for the landlord to make repairs to the unit, site or property
LRE	An order suspending or set conditions on the landlord’s right to enter the rental unit.

As these sections of the tenant’s application are unrelated to the main section which is to cancel the notice to end tenancy issued for unpaid rent, I dismiss these sections of the tenant’s claim with leave to reapply. The hearing proceeded on the tenant’s application to cancel the 10 Day Notice for Unpaid Rent.

Issue(s) to be Decided

Is the tenant entitled to an order to cancel the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant’s claim and my findings are set out below.

This tenancy began on April 1, 2015 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$1,500.00 payable on the 1st day of each month and a security deposit of \$750.00 was paid.

Both parties confirmed that the landlord served the tenant with a 10 Day Notice dated June 2, 2016. The 10 Day Notice sets out that the tenant failed to pay rent of \$1,500.00 that was due on June 1, 2016 and an effective end of tenancy date of June 14, 2016.

Both parties confirmed that the landlord served the tenant with the 10 Day Notice dated June 2, 2016 by placing it in the tenant’s mailbox on June 2, 2016.

The landlord provided affirmed testimony that as of the date of this hearing the tenant has not paid any rent. The tenant provided affirmed testimony that he told the landlord that he “was not going to pay”. The tenant clarified that the landlord owes him money which is in dispute and that landlord has failed to make repairs when requested. The tenant clarified that he did not have permission from the landlord or from the Residential Tenancy Branch to withhold rent.

Analysis

Section 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not provide evidence that he was entitled to deduct amounts for emergency repairs, for money owed or as a result of a prior order from the Residential Tenancy Branch.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord testified that the tenant failed to pay rent for June 2016. The tenant admits that he did not pay June’s rent.

As the tenant has failed to pay his rent in full when due, I find that the 10 Day Notice issued June 2, 2016 is valid and dismiss the tenant’s application to cancel the 10 Day Notice without leave to reapply. As the tenant’s application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on June 14, 2016, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

Conclusion

The tenant’s application to cancel the 10 Day Notice is dismissed without leave to reapply.

The landlord is granted an order of possession for unpaid rent.

The landlord must serve the tenant with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: July 07, 2016

Residential Tenancy Branch