Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction
The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the 10 day Notice to End Tenancy dated June 24, 2016

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 served on the Tenant by mailing, by registered mail to where the Tenant resides on June 24, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on landlord on July 1, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:
The issue to be decided is whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated June 24, 2016?

Background and Evidence
The tenancy began on September 1, 2014. The tenancy agreement provided that the tenant(s) would pay rent of $450 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of $225 on September 1, 2014.

Briefly, the relevant facts are as follows:

- On April 1, 2016 an arbitrator issued a decision that included the following:
  - The tenant was awarded a monetary order in his favour in the sum of $1675.
  - The tenant was awarded a reduction of rent of $75 per month commencing April 1, 2016 and on the first day of each month thereafter until the landlord serves the Tenant confirmation from a qualified service technician that the radiator is functioning properly
  - The tenant was awarded a reduction of rent of $50 per month commencing May 1, 2016 and on the first day of each month thereafter until the landlord

serves the Tenant evidence from a qualified professional that the hot water in the rental unit meets local building standards by April 30, 2016

- The parties were reminded of the provisions 72(2)(a), which authorizes a tenant to reduce his rent payments by any amount directors orders a landlord to pay to a tenant, which in these circumstances is $1675.

- On April 20, 2016 the agent for the landlord wrote to the Tenant referencing the above decision, copying section 72 of the Residential Tenancy Act and stating the tenant was not expected to pay the rent until September 1, 2016 at the current amount of rent payable.
- On May 2, 2016 an advocate for the Tenant e-mailed a letter to the agent for the landlord that stated that the Ministry requires that the parties sign a mutual consent to apply the Monetary Order as future rent abatement.
- After receiving this letter the landlord faxed the Ministry a Notice stating that the tenant was not required to pay rent to the Landlord until September 1, 2016.
- Unknown to the landlord, on April 26, 2016 the tenant made an application to the Provincial Court of British Columbia for a Summons to a Payment Hearing and claiming $1675 plus $101 in expenses for a total of $1776.
- The agent for the landlord states the ill will of the Tenant is shown by the following:
  - The tenant had not made a previous demand on the Landlord.
  - The tenant did not advise the landlord that he was not agreeing to the landlord's proposal of an abatement of rent.
  - The tenant failed to serve the landlord and they were unaware of the date of the hearing until after an arrest warrant had been issued against the owner for non-appearance at that hearing.
- The rent for May in the sum of $425 from the Ministry was directly deposited into the landlord's account as was the usual practice.
- The rent for June was not paid. It appears the Ministry was under the understanding that the Tenant was taking advantage of the abatement of rent. The landlord assumed the tenant was taking advantage as they had not received communications from the Tenant to the contrary.
- The first time the landlord became aware that the Tenant was seeking to recover a monetary order and not an abatement of rent was in late June.
- The landlord served the 10 day Notice to End Tenancy on the Tenant by registered mail on June 24, 2016.
- The tenant testified he acted on the understanding that the Ministry was continuing to pay the rent when it became due. The first time he became aware this was not happening was when he received the 10 day Notice.
- Upon receipt of the 10 day Notice the tenant and his advocate attended at the office of the Ministry. The Ministry issued two cheques in the sum of $325 to cover the rent for June and July 2016. The amount is reduced as the parties agreed that by the terms of the order of the arbitrator in the April 1, 2016 decision, the rent was reduced by $125 per month.

- The tenant and his advocate testified that on July 1, 2016 they attended at the owner's residence and delivered the two cheques in the sum of $325 each being the rent for June and July 2016 along with other documents.
- The agent for the landlord testified they have not received those cheques.
- The advocate for the Tenant assumed there had been no problem with the cheques. It wasn't until July 20, 2016 after they received an Amendment to the Notice to End Tenancy (reversing the date of the Notice and the effective end of tenancy date) that they became aware that the landlord took the position they had not received the cheques.
- The tenant and his advocate have requested the Ministry to provide replacement cheques which they expect will be ready by tomorrow. They requested where the cheques should be paid and the landlord stated it should be paid the hotel the tenant is living at.
- The parties also agreed there had been an overpayment of $50 for April 2016 and $125 for May 2016 for a total of $175.
- The landlord has made a payment into provincial court of the full amount under the provincial court order on August 1, 2016.

Briefly, the landlord submits as follows:

a. The tenant cannot have it both ways. On one hand taking advantage of the abatement of rent and on the other hand using the Provincial Court to enforce the monetary order. The tenant chose to use the Provincial Court to enforce the monetary order and cannot rely on the abatement of rent provisions under section 72(2),
b. The tenant failed to pay the rent for June and July and a 10 day Notice to End Tenancy was served on the Tenant.
c. The rent for those two months have not been paid as of yet.

Briefly, the tenant submits as follows:

a. The Notice to End Tenancy is of no effect as the arrears set out in the Notice were paid within 5 days.
b. The tenant did not agree to the request of the landlord for an abatement of rent. The landlord did not have a legal right to deal directly with the Ministry.

Analysis:

Unfortunately, the relationship between the parties is marred by a lack of civility and distrust. Both parties failed to communicate with each other in an attempt to gain an advantage or to put the other party in an embarrassing situation.

I do not agree with the advocate for the tenant that the landlord acted improperly in his contact with the Ministry. He wrote a letter to the tenant proposing the rent abatement. The tenant failed to respond. Subsequently, another advocate for the tenant (in the same office) wrote the landlord saying both parties would have to give the landlord their consent. He did not attend the hearing or provide a statement as to his understanding of the agreement. The landlord

immediately faxed his consent of the rent reduction. The present advocate stated the letter was merely consenting to the monthly deductions and not the $1675. If that is correct, the letter is ambiguous and it is easy to understand how the landlord might interpret the letter to be consenting to the abatement of the entire judgment amount. It is unfortunate that the advocate could have made it clear to the landlord the position that tenant was taking and that the tenant had already filed for a Summons hearing in Small Claims Court. If is unfortunate that the agent for the landlord failed to advise the advocate for the tenant that he took the position that the rent remained outstanding until July 20, 2016,

At any rate I determined that the 10 day Notice to End Tenancy is of no effect for the following reasons:

a. I accept the testimony of the advocate for the tenant that she and the tenant attended at the owner's residence on July 1, 2016 and delivered the two cheques. There is no reason why the tenant and his advocate would not deliver the cheques after they had gone through the efforts to get them from the Ministry. The owner did not attend the hearing and did not testify. Based on the evidence presented at the hearing I am satisfied the cheques were tendered within 5 days and as a result the Notice to End Tenancy is of no effect under section 46(4) of the Act.
b. Section 72 (2) provides as follows:

> **Director's orders: fees and monetary orders**
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> **72** (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
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> (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
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> (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Section 72(2) of the Act provides that the amount of a monetary order may be deducted from any rent due to the landlord. The Notice to End Tenancy is dated June 24, 2016. At that time the rent was $325 after the two deductions provided in the order of the arbitrator of April 1, 2016. In addition there had been an overpayment of $50 for April and $175 for May for a total of $225. The amount owing as of the date of the Notice was $100. The tenant had the legal right to apply the monetary order to any balance owing. In my view the fact he had started proceedings in Small Claims Court does not affect this legal right. The result would have been different had the landlord paid the amount of the order into Small Claims Court prior to the issuance of the Notice in June 2014. However, that payment did not occur until August 1, 2016.

In summary I determined the landlord failed to establish sufficient grounds to end the tenancy. As a result the Notice to End Tenancy dated June 24, 2016 is cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

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.

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: August 17, 2016

Residential Tenancy Branch