



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$6150 for unpaid rent
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated June 22, 2016
- b. An order that the landlord make emergency repairs and repairs.
- c. An order that the landlord provide services or facilities required by law
- d. An order that the landlord comply with the Act, regulation and/or the tenancy agreement
- e. An order that the tenant recover the cost of the filing fee

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. The parties acknowledged they had received the documents of the other party.

I find that the 10 Notice to End Tenancy was served on the Tenant by posting on June 22, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated June 22, 2016?
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?
- c. Whether the tenant is entitled to an order for emergency repairs or for repairs?
- d. Whether the tenant is entitled to recover the cost of the filing fee?
- e. Whether the landlord is entitled to an Order for Possession?
- f. Whether the landlord is entitled to A Monetary Order and if so how much?
- g. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- h. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant and the previous owner entered into a tenancy agreement that provided that the tenancy would start on March 1, 2010. The rent at start of the tenancy was \$1230 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$600 at the start of the tenancy.

The present landlord purchased the rental unit in February 2015. The present rent is \$1230 per month payable on the first day of each month. The tenant(s) failed to pay the rent for the months of April 2016, May 2016, June 2016, July 2016 and August 2016 and the sum of \$6150 remains owing. The tenant(s) have remained in the rental unit.

Tenant's Application:

The tenant testified the landlord failed to sign the 10 day Notice to End Tenancy. The landlord testified he signed the Notice to End Tenancy but failed to keep a copy of that signed Notice. The tenant failed to produce the documents he was relying on. The Tenant has not been prejudiced as he filed an Application for Dispute Resolution shortly after he received it. I ordered that if the 10 day Notice to End Tenancy is not signed that it be amended to include the landlord's signature.

The tenant testified that he failed to pay the rent because the landlord failed to make repairs despite being requested to do so. Section 26(1) of the Act provides as follows:

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.

The Act does not permit the Tenant to withhold the payment of rent until the Tenant has first obtained an order for an Arbitrator to do so.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. The tenant did not have a legal right to withhold the rent. As a result I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. With the consent of the parties I set the effective date to end the tenancy for August 31, 2016.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective August 31, 2016.

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.

I dismissed the remainder of the tenants' claim as the tenancy is coming to an end. The disruption caused by a repair order or an order for emergency repairs would limit the tenants' ability to vacate.

Landlord's Application:

For the reasons set out above I granted an Order for Possession effective August 31, 2016.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of months of April 2016, May 2016, June 2016, July 2016 and August 2016 and the sum of \$6150 remains owing. I granted the landlord a monetary order in the sum of \$6150 plus the sum of \$100 in respect of the filing fee for a total of \$6250.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$600. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$5650.

Conclusion:

In summary I dismissed the Tenants application to cancel the 10 day Notice to End Tenancy and I granted an Order for Possession effective August 31, 2016. I

determined the landlord has established a claim against the Tenants in the sum of \$6250. I ordered that the landlord shall retain the security deposit of \$600. I further ordered that the Tenants pay to the Landlord the sum of \$5650.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court 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: August 08, 2016

Residential Tenancy Branch

