



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNSD, MNDC, LAT, RR, OP, MNR, MNSD, OPR

Introduction

These were two competing applications. The tenant's application was to cancel two notices to end the tenancy for Cause and Non-Payment of Rent, to reduce the rent, return of the security deposit, compensation for the wrongful eviction and disposal of belongings, and authorization to change the locks. The landlords brought their own application for an Order for Possession for non-payment of rent and a monetary compensation for unpaid rent, moving expenses and cable services. All the parties were present.

Preliminary Matters:

Both the landlord and tenant advised that the tenant had moved out on August 19, 2016. Accordingly the applications to cancel Notices to End, limit access to the unit and for an Order for Possession are dismissed. Furthermore, during the course of this proceeding and upon review of the tenant's application, I have determined that the tenant was not prepared to deal with any of her monetary claims or claims to reduce the rent as she had not completed a monetary order work sheet and had not supplied any evidence in support of these claims. She stated she would like to gather more evidence. Therefore, I will only deal with the landlord's application for monetary compensation for unpaid rent, moving expenses and unpaid cable utilities. I have dismissed with leave to reapply all of the tenant's monetary claims and claims to reduce the rent and I have dismissed the balance of the landlord's and tenant's claims.

The landlord admitted service of the tenant's application and the tenant admitted receipt of the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to recover compensation for loss of rent, revenue, moving expenses and unpaid utilities?

Background and Evidence

The landlord testified that he rented the unit to both the tenant and her boyfriend CB commencing on May 15, 2016 on a month to month rental. The rent was payable on the 31st day of each preceding month. There was no written tenancy agreement. The rent was \$ 1,500.00 per month. The landlord received a security deposit of \$ 750.00 on May 15, 2016.

The landlord testified that the tenant did not pay rent for August 2016. The landlord testified that he served a Notice to end a Tenancy for Nonpayment of Rent dated August 1, 2016 on the tenant by handing it to her on that day. The tenant's boyfriend CB gave the landlord notice that the tenants intended to move out on August 19, 2016. CB requested that the landlord hire and pay for movers to move the tenant's belongings. The landlord testified that the parties split up yet he also testified that all the belongings were moved to CB's new apartment in North Vancouver. The landlord is requesting reimbursement for \$ 1,083.00 representing the moving expenses. The landlord began looking for new tenants after the tenant moved out but only found new tenants for September 15th. The landlord also claims the sum of \$ 179.00 representing unpaid Shaw cable services during the tenancy. The landlord is claiming for the loss of revenue for all of August amounting to \$ 1,500.00 and one half of September amounting to \$ 750.00 as he was only able to re-rent the unit effective September 15, 2016.

The tenant agreed when the tenancy began, how much her rent was but testified that all utilities were included in the rent and that the Shaw cable was in the landlord's name. The tenant admitted to not paying the rent for August 2016 because the landlord had repeatedly failed to make necessary repairs and supply proper appliances. The tenant testified that on August 19, 2016 she came home and discovered that the landlord had moved all her belongings onto the street and that eventually they were put into storage. The moving/storage company now refuses to release her belongings without payment. She testified that she is still in touch with her boyfriend and he does not have her personal property. She lost all her property, is homeless and needs time to collect evidence to prove what is missing.

Analysis

The landlord has the burden to prove his claim on the balance of probabilities. There are two competing versions of what transpired on August 19, 2016. However even if the landlord's version that the tenant broke up with CB is true, then it makes no sense that the landlord move all of the tenant's belongings at the behest of CB to some unknown location. At common law a landlord is the Bailee of the tenant's belonging's left in a unit. Here I find the landlord had no lawful authority to either dispose of or permit the tenant's belongings to be moved to either an unknown location or her former boyfriend's apartment without the tenant as Bailor's consent, when as he alleges he knew they broke up. Accordingly I find the landlord had no lawful right to move the tenant's belongings even if CB requested him to do so. Accordingly I have dismissed his claims for moving expenses as against this tenant. I further find that in absence of a written tenancy agreement and because of conflicting evidence regarding whether the cable utilities were to be included in the rent, I find that the landlord has not proven that claim.

The tenant admitted to not paying the rent for August, failed to dispute the Notice to End the Tenancy within the five days permitted in section 46 of the Act and therefore has accepted that the tenancy ended. Accordingly I find that the landlord is entitled to recovery of \$ 1,500.00 for the month of August. However because the landlord failed to mitigate his loss by searching for new tenants earlier than after the tenant moved out, I have dismissed his claim for loss of revenue for one half of September.

Conclusion

I Order the landlord to retain the tenant's security deposit of \$750.00 and grant him a monetary Order for the balance owing of \$ 750.00. I have dismissed the tenant's applications for an Order to cancel all Notices to End the Tenancy, and limit access to the unit. I have dismissed the balance of the tenant's claims but with leave to reapply. I have dismissed the balance of the landlord's claims. Neither party will recover their filing fees because of the divided results.

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: September 27, 2016

Residential Tenancy Branch

