



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR MNDC FF
For the tenants: CNR MNR MNDC OLC ERP RP RPP RR FF

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 13, 2016 (the “10 Day Notice”), for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the cost of emergency repairs already made, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, for an order directing the landlord to make emergency repairs for health or safety reasons, for an order directing the landlord to make regular repairs to the rental unit, for a rent reduction, for an order directing the landlord to return the tenant’s personal property, and to recover the cost of the filing fee.

The tenant, a friend of the tenant, and the landlord attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

After considering the evidence before me including registered mail tracking numbers I am satisfied that the parties were served in accordance with the *Act*.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Firstly, the parties agreed that the second tenant included on the tenant's application was not a tenant of the rental unit and as a result, that person S.C. has been removed from the tenant's application pursuant to section 64(3)(c) of the *Act*.

Secondly, Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 10 Day Notice. I find that a portion of the tenant's claim is not sufficiently related to the 10 Day Notice to be determined at this proceeding. **I will, therefore, dismiss the tenant's application for monetary compensation with leave to reapply.** Regarding the tenant's request for an order directing the landlord to comply with the *Act*, to make emergency repairs, and to make regular repairs to the unit, site or property, I will either dismiss those portions without leave to reapply if the 10 Day Notice is upheld or in the alternative, will dismiss with leave to reapply if the 10 Day Notice is cancelled. As a result, I will address these matters later in this Decision.

Issues to be Decided

- Should the 10 Day Notice be cancelled?
- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent or utilities under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on February 1, 2016 and is scheduled to revert to a month to month tenancy after January 31, 2017. Monthly rent in the amount of \$1,375.00 is due on the first day of each month.

A copy of the 10 Day Notice was submitted in evidence. The tenant confirmed that he was served with the 10 Day Notice on August 13, 2016 and that the 10 Day Notice was dated August 13, 2016. The 10 Day Notice indicates that the tenant failed to pay \$1,375.00 in rent due August 1, 2016. The effective vacancy date listed on the 10 Day Notice was August 23, 2016. The tenant continues to occupy the rental unit.

The landlord testified that since the tenant failed to pay rent for August, the tenant has not paid any rent for August, September, or October 2016 and has suffered a loss of rent as a result. The tenant confirmed that he did not pay rent for August, September or October 2016. The landlord has claimed for unpaid August 2016 rent of \$1,375.00 and loss of September and October 2016 rent of \$1,375.00 for each of those months.

The tenant testified that he did not pay rent since July 2016 due to problems in the rental unit such as the rental unit being dirty, there being no condition inspection report, kitchen faucet leaks, bathtub problems, lack of bathroom fan, lots of “mould”, nothing getting fixed, communication breakdown, an illegal renovation by the landlord and the overall state of the rental unit.

The landlord is also claiming for late fees for the months of August, September and October 2016. The landlord did not submit a copy of a tenancy agreement or addendum that specified a late fee could be charged for any late payment of rent under the tenancy agreement or addendum.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

Section 26 of the *Act* applies and states:

Rules about payment and non-payment of rent

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.

[my emphasis added]

In the matter before me, the tenant testified that he did not pay August, September or October 2016 rent for the reasons stated above. I find that the tenant did not have the right to withhold rent or deduct all or a portion of rent and has breached section 26 of the *Act* as a result. As a result, I dismiss the tenant’s application to cancel the 10 Day Notice and I find that the 10 Day Notice is valid. Therefore, I uphold the 10 Day Notice.

Order of Possession – The effective vacancy date of the 10 Day Notice was August 23, 2016 which has already passed on the tenant continues to occupy the rental unit. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**
- (b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[my emphasis added]

Based on the above, and taking into account that I have reviewed the 10 Day Notice and have determined that it complies with section 52 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. The tenancy ended on August 23, 2016 and the tenant has been over-holding the rental unit since that date.

Claim for unpaid rent and loss of rent – Based on the tenant's testimony which was confirmed by the landlord, I find that the tenant failed to pay \$1,375.00 in rent for August 2016, and that the landlord also suffered a loss of rent for the months of September and October 2016 as the tenant continues to occupy the rental unit. The landlord will not regain possession of the rental unit until after service of the order of possession. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$4,125.00** comprised of \$1,375.00 for unpaid rent for August 2016 and loss of rent for the months of September 2016 and October of 2016 at \$1,375.00 for each month.

Claim for late fees – The landlord failed to submit documentary evidence to support that the tenancy agreement including any addendums to the tenancy agreement, included a term that was agreed to by the tenant at the start of the tenancy where any late payment of rent would be subject to a fee and how much that specific fee was under the tenancy agreement. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence.

As the landlord's application had merit, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**.

As the tenancy ended on August 23, 2016, and the tenant's application has been dismissed, I dismiss without leave to reapply the tenant's application for an order directing the landlord to comply with the *Act*, to make emergency repairs, and to make regular repairs to the unit, site or property as those are now moot.

As the tenant's application has been dismissed, I do not grant the tenant the recovery of the cost of the filing fee.

Monetary Order – I find the landlord has established a total monetary claim of **\$4,225.00**, comprised of \$4,125.00 in unpaid rent and loss of rent, plus the recovery of the \$100.00 filing fee. I grant the landlords a monetary order pursuant to section 67 of the *Act* in the amount of \$4,225.00.

Conclusion

The tenant's application is dismissed.

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$4,225.00 as described above. The landlord has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$4,225.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 14, 2016

Residential Tenancy Branch