



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: FFL OPRM-DR

For the Tenant: ERP FFT LAT LRE MNDCT MNRT RP

Introduction

This decision is in respect of the landlord's and tenant's applications for dispute resolution under the *Residential Tenancy Act* (the "Act") made on November 9, 2018 and October 30, 2018, respectively.

The landlord seeks an order of possession for unpaid rent, a monetary order for unpaid rent, and a monetary order for recovery of the filing fee.

The tenant seeks orders for emergency repairs, a lock change authorization, a restriction or suspension of the landlord's right to enter the rental unit, regular repairs, for compensation, and for compensation for recovery of the filing fee.

A dispute resolution hearing was convened on December 7, 2018 and the tenant, the landlord, and a third party for the landlord (this individual did testify or act in any official capacity for the purposes of the proceeding). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

No issues of service of notices or evidence were raised by the parties.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of these applications are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to a monetary order for recovery of the filing fee?
4. Is the tenant entitled to compensation for, as stated in his application, "The safety conditions of the premises are not safe and secure"?
5. Is the tenant entitled to compensation for the cost of emergency repairs?
6. Is the tenant entitled to compensation for recovery of the filing fee?
7. Is the tenant entitled to an order for emergency repairs?
8. Is the tenant entitled to an order for regular repairs?
9. Is the tenant entitled to an order authorizing a lock change?
10. Is the tenant entitled to an order restricting or suspending the landlord's right to enter the rental unit?

Background and Evidence

The landlord testified that the tenancy commenced in mid-July 2018 (later correcting herself and confirming what the tenant said about him moving into the rental unit in the middle of June, June 12 to be exact). Monthly rent is \$1,100.00, due on the first of the month. The tenant did not pay a security deposit or a pet damage deposit. He did not have to pay the deposits because when he took possession of the rental unit, it was a recently finished place and there was various construction detritus left about. I note that there is no written tenancy agreement in existence.

While the tenant paid rent for July, August and September 2018, he stopped paying rent in October 2018. The tenant wrote a letter to the landlord on October 4, 2018, in which he explained the various issues with the rental unit and noted that he intends to move out as soon as possible. The landlord responded to the letter and confirmed her understanding of that intention.

On October 10, 2018, the landlord and a third party (the individual present at the hearing) served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on the tenant by posting the Notice on the tenant's door. The effective end of tenancy was October 20, 2018 (which, as I note below, is extended to October 23, 2018). A copy of the Notice was submitted into evidence. Finally, the landlord explained and submitted that the tenant is in arrears for three months of rent in the amount of \$3,300.00, plus utilities. No copies of utility bills were submitted into evidence.

The tenant testified about several ongoing issues with the rental unit that he had experience since moving in on June 12, 2018. These included a lack of appliances, no working freezer in the refrigerator, no island in the kitchen, no mirror on the vanity, no door, no locks, no cupboards. There are no closets and no heat in the rental unit. He spoke of being harassed by the landlord and of trailer being parked in his parking spot. Finally, he testified that he paid rent for July, August and September 2018. He concluded his testimony by stating that the entire experience “has been a nightmare” and that he does not want to have to live in the rental unit and is looking for another place to live. The tenant submitted no documentary evidence regarding any of the issues as set out in the particulars of his application, I note.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. I turn first to the landlord’s application for an order of possession and a monetary order for unpaid rent.

Sections 46(4) and (5) state the following:

- (4) Within 5 days after receiving a notice [for unpaid rent] under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

In this case, the Notice was posted on the door on October 10, 2018, and is presumed to have been received by the tenant on the third day after it was posted, as per section

90(c) of the Act. The tenant did not pay rent or make an application for dispute resolution within 5 days after receiving the notice (I note that he filed for dispute resolution on October 30, well beyond the 5-day period elapsed. As such, as per section 46(5) of the Act, I find the tenant is conclusively presumed to have accepted the tenancy ended on October 20, 2018.

Subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Applying section 55 of the Act to the testimony regarding the tenant's failure to pay rent and regarding the tenant's failure to apply for dispute resolution, pursuant to sections 46 and 55 of the Act, I hereby grant an order of possession to the landlord. This order is effective two days after service upon the tenant.

Regarding the landlord's claim for a monetary order for unpaid rent, she seeks \$3,300.00 for unpaid rent for October, November and December 2018. The tenant did not dispute that he has not paid rent for these months.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her claim for compensation in the amount of \$3,300.00.

As the landlord was successful in her application I award her a monetary award of \$100.00 for recovery of the filing fee.

As the tenancy is ended, and the landlord is being granted an order of possession, I will not consider the tenant's application for items 7 to 10 as listed under the Issues section of this decision. Those aspects of his application are dismissed without leave to reapply.

Regarding the tenant's claims for compensation, the tenant submitted no supporting documentation to establish the amounts claimed. As such, he has not met the burden of proving his claim for compensation on a balance of probabilities, and I therefore dismiss that aspect of his application without leave to reapply.

As the tenant was not successful in his application I do not award any compensation for recovery of the filing fee.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$3,400.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

I dismiss the tenant's application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 7, 2018

Residential Tenancy Branch