



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, MNR, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package and a copy of the 10 Day Notice via Canada Post Registered Mail. The landlord disputed that no such package was received, but that the landlord was informed by the Residential Tenancy Branch of the tenant's application and provided with the hearing details to participate. The tenant was unable provide any supporting evidence of service. However, the landlord stated that they were available and prepared to go ahead with the hearing. On this basis, the hearing proceeded.

During the hearing extensive discussions took place in clarifying the tenant's claim. The tenant acknowledged that the \$480.00 claim for a reduction in rent was for contract services for labour that was unrelated to rent or the tenancy. On this basis, this portion of the tenant's claim was dismissed. Both parties confirmed their understanding that this portion of the tenant's claim was related to an employment standards issue and not a residential tenancy issue.

At the end of the hearing both parties provided clarification on the mailing address for delivery of this decision. The tenant requested that the decision be delivered care of a friend and the landlord provided a PO Box address for delivery. The Residential Tenancy Branch File shall be amended to reflect these changes.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Is the tenant entitled to a monetary order for compensation?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that there was no signed tenancy agreement. Both parties confirmed that monthly rent was \$800.00 due on the last day of each month for the proceeding month.

Both parties confirmed the tenant was served with a 10 Day Notice for Unpaid Rent dated October 7, 2019 in person on October 7, 2019. The 10 Day Notice states that the tenant failed to pay rent of \$800.00 + \$800.00 = \$1,600.00 that was due on August 31, 2019. It also provides for an effective end of tenancy date of October 16, 2019.

The landlord clarified that the 10 Day Notice refers to unpaid rent of \$800.00 for September 2019 and \$800.00 for October 2019. The landlord stated that no rent has been paid since this notice was issued.

The tenant disputes the landlord's claim and argued that rent was paid in cash for which no receipts were issued. The tenant stated that on August 27, 2019 the tenant paid \$700.00 in cash to the landlord and again \$700.00 in cash at the end of September 2019 for September and October 2019 rent. The tenant stated that he has always paid cash directly to the named landlord and the landlord has always failed to provide any receipts for these payments.

The landlord's agent stated that on September 12, 2019 she attended the tenant's rental unit to collect the September 2019 rent, but was told verbally by the tenant that he did not intend to pay any rent. The landlord's agent stated as the book keeper for the

landlord she is in possession of copies of rent receipts issued to the tenant starting January of 2018.

The tenant seeks a clarified monetary claim of \$1,855.00 which consists of:

\$870.00	Compensation, contract job
\$985.00	Cost of Emergency Repairs, stove, dryer and hot water tank

The tenant claims that he is owed \$870.00 for services for a contract job that the landlord had agreed to. The tenant stated that the total job was for \$1,870.00 for which the landlord agreed to the tenant withholding \$100.00 off per month from the monthly rent until the debt was satisfied. The landlord confirmed that an agreement was made for the contract job and that the tenant was able to withhold \$100.00 per month until the debt was satisfied, however the landlord argued that the debt was repaid in full in July 2019.

The tenant also seeks recovery of emergency repair costs for replacement of a stove, dryer and a hot water tank. The tenant provided written details in his application which states that he purchased a used stove for \$225.00, a used dryer for \$200.00 and a hot water tank for \$380.00 and \$180.00 for the installation of the hot water tank. No invoices or receipts were submitted. The tenant stated that the landlord was notified and gave permission to replace them. The landlord disputes this claim stating that at no time was he notified of all these issues. The landlord argued that although he received notification for the hot water tank the landlord paid a plumber to install it. The landlord further argues that at no time did the landlord agree to pay for the stove or dryer or was any agreement made with the tenant for them.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Both parties confirmed the landlord served the tenant with the 10 Day Notice dated October 7, 2019 in person as claimed. In this case, the landlord states that the tenant failed to pay rent of \$800.00 for September 2019 and \$800.00 for October 2019 and issued the 10 Day Notice on October 7, 2019.

The tenant has argued that rent was paid in cash directly to the named landlord for \$700.00 for each month, but that no receipts were issued. The tenant provided

testimony that September rent was paid on August 27, 2019 and at the end of September for October rent. The tenant further stated that since this tenancy began he has been paying rent in cash without any receipts issued by the landlord.

I find that the tenant was properly served with the 10 Day Notice dated October 7, 2019 in person as confirmed by both parties. In this case, the tenant has argued that rent was paid in cash, but that the landlord failed to issue any receipt. The landlord has disputed this claim. The tenant provided testimony that since the tenancy began, he has been paying the rent in cash for which the landlord has refused to issue a receipt. The tenant was unable to provide any supporting evidence of a rent payment for both September and October of 2019. The landlord has argued that although none have been submitted in evidence, the landlord's agent is in possession of copies of rent receipts issued to the tenant since January 2018. I find based upon the above submission of both parties that on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant as the tenant has failed to provide sufficient evidence of rental payments as claimed. The 10 Day Notice dated October 7, 2019 is upheld. The tenant's application to cancel the 10 Day Notice is dismissed. As the effective end of tenancy date has now passed, I grant the landlord an order of possession to be effective two days after being served.

On the remaining monetary claims made by the tenant of \$870.00 and \$985.00 for a total of \$1,855.00, I find that the tenant has failed to provide sufficient evidence to satisfy me of the claim. The tenant relied primarily on his direct testimony that an agreement was made for a contract job for \$1,870.00 for which the landlord had agreed to allow the tenant to withhold \$100.00 per month until the debt was satisfied. Although the landlord confirmed the details and content of this agreement, the landlord argued that the debt was satisfied in July 2019. The tenant failed to provide sufficient supporting evidence of when the \$100.00 per month hold back on rent began or any type of schedule for payments. I also note that the tenant's claim for emergency repairs was in fact for replacement of appliances. On this issue although the tenant claims that he received permission to purchase these items after notifying the landlord, the landlord has disputed that an agreement was made. The landlord in fact argued that he paid a plumber to install the hot water tank and denied any agreement was made on the stove and dryer. I also note that the tenant failed to provide any invoices or receipts for the purchase of these appliances. The tenant's monetary claim is dismissed.

Conclusion

The landlord is granted an order of possession.

The order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: November 25, 2019

Residential Tenancy Branch