



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, CNC, CNR, MNR, MNSD, OLC, FF

Introduction

This hearing dealt with cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent; to set aside a Notice to End tenancy for Cause; and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's application, are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Act*.

The issues to be decided in relation to the Tenant's application, are whether the Notice to End Tenancy for Unpaid rent should be set aside; whether the Notice to End Tenancy for Cause should be set aside; and whether I should make an Order requiring the Landlord to comply with the *Act*.

Background and Evidence

The Agent for the Landlord and the Tenant agreed that this tenancy began on May 01, 2008; that the Tenant is required to pay monthly rent of \$1,100.00; and that the Tenant paid a security deposit of \$550.00 on April 10, 2008.

The Agent for the Landlord stated that he was present on March 02, 2009 when the Witness personally served the male Tenant with a Ten day Notice to End Tenancy for Non-payment of Rent, which had an effective date of March 12, 2009. The Notice indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Witness stated that he served the Ten Day Notice for Non-payment of Rent to the male Tenant at the rental unit on March 02, 2009.

At the hearing, the Tenant stated that he was not personally served with the Ten Day Notice to End Tenancy for Non-payment of Rent. He stated that he found it on his coffee table on March 06, 2009, and he does not know how the Notice was delivered to his residence. He speculates that it was served on a person who was visiting him or the Agent for the Landlord entered his rental unit and left it on the table.

In his Application for Dispute Resolution, the Tenant wrote that he received the Ten Day Notice on March 02, 2009 "by hand".

The Agent for the Landlord and the Tenant agree that the Tenant has not paid the rent, in the amount of \$1,100.00, for March of 2009.

The Tenant stated that he attempted to pay the outstanding rent about seven to ten days ago, which would be sometime between March 13, 2009 and March 16, 2009. He stated that he brought a cheque, in the amount of \$187.50, plus the remaining rent in cash to the receptionist. He stated that the Agent for the Landlord told him he would not accept the payment.

The Agent for the Landlord stated that the Tenant attended the office on March 09, 2009 and attempted to tender a cheque, in the amount of \$187.50, in partial payment of the outstanding rent. He stated that there was no reference to paying the remainder of the rent in cash. The Landlord stated that he overheard the Tenant make reference to hoping that he did not cause any violence, which the Landlord interpreted as being a threatening remark, at which time he told the Tenant to leave the office.

The Tenant is seeking an Order restricting the Landlord's right to enter the rental unit. He stated that he has been advised by neighbours, who he did not identify, that the Agent for the Landlord has entered his rental unit on several occasions. He submitted no evidence to corroborate this statement.

The Agent for the Landlord stated that he has not been in the rental unit since it was rented to the Tenant.

Analysis

I find that the Tenant was personally served a Ten Day Notice to End Tenancy for Unpaid Rent on March 02, 2009. In reaching this conclusion, I was strongly influenced by the statements of two of the Landlord's employee who were present during the service and by the written information provided by the Tenant, in which he acknowledged receiving the Notice on that date. I completely disregard the Tenant's statement that he found the Notice on his coffee table, as it contradicts the written evidence he submitted.

I find that the Tenant attempted to pay \$187.50 of the outstanding rent on March 09, 2009, which was not accepted by the Landlord. I do not find that the Tenant attempted to pay the remainder of the outstanding rent, in cash, at that time. I favour the evidence of the Agent for the Landlord over the evidence of the Tenant, regarding this incident for the following reasons:

- The Tenant has shown himself to be an unreliable witness when he gave contradictory evidence regarding the Notice to End Tenancy
- The Tenant's version of events was self-serving
- I find it unlikely that a Landlord would not accept payment for rent that was due, particularly when payment could be accepted without reinstating the tenancy.

The Agent for the Landlord and the Tenant agree that the Tenant has not paid any of the outstanding rent for March.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord, unless they have a right under the *Act* to deduct all or a portion of the rent. The Tenant submitted no evidence to show that he had a right to deduct any portion of the rent that was due for March of 2009. On this basis, I find that the Landlord had the right to end the tenancy by serving a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46(1) of the *Act*, as the Tenant has not paid any of the rent that was due on March 01, 2009.

On this basis I dismiss the Tenant's application to set aside the 10 Day Notice for Unpaid Rent; I grant the Landlord an Order of Possession that is effective on March 31, 2009; and I find that the Tenant owes \$1,100.00 in rent for March.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$556.00, in partial satisfaction of the monetary claim.

I dismiss the Tenant's application for an Order to comply with the *Act* is regards to accessing the rental unit, as I find that the Tenant has submitted insufficient evidence to establish that the Landlord has been unlawfully accessing the rental unit.

As this tenancy is ending on March 31, 2009, pursuant to section 46 of the *Act*, I find there is no need to consider the Tenant's application to set aside the Notice to End Tenancy for Cause.

Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on March 31, 2009. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$1,150.00, which is comprised on \$1,100.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$556.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$594.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: March 24, 2009
