



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's request for an Order of Possession and a Monetary Order for unpaid rent. Both parties appeared at the hearing and were provided the opportunity to provide testimony related to unpaid rent and to respond to the submissions of the other party. The landlord testified that the tenant uses two different last names and the tenant was served with notification of this hearing by registered mail sent to the tenant under both names. Therefore, the Orders that accompany this decision identify one tenant with two different last names.

At the commencement of the hearing, the tenant requested an adjournment. Upon enquiry, the tenant confirmed she received notification of this hearing on February 6, 2010 but that she had not had sufficient time to gather and submit evidence to substantiate her position. The tenant indicated she wanted to submit bank records, audio recordings and witness statements but that the Residential Tenancy Branch would not accept her documentation with the explanation that the evidence would be late. However, I noted that on February 11, 2010 the tenant attended the Residential Tenancy Branch to submit a letter requesting an adjournment on the basis that she was unavailable to attend today's hearing. The written request for adjournment also states that the landlord had consented to rescheduling the hearing. There is no mention of requiring more time to gather evidence in the tenant's written request for adjournment. Upon consideration of this inconsistent position and that the tenant had several days to gather evidence and submit it, even if it were late evidence, I did not grant the adjournment.

During the hearing, I also determined that the landlord had not submitted a copy of his evidence package to the tenant. The landlord was of the position that the Residential Tenancy Branch was to serve the tenant with his evidence and that the landlord did not know he was to submit a separate evidence package to the tenant. I informed the parties that both parties are required to serve the Residential Tenancy Branch and the other party with all of the evidence they intend to rely upon, as provided for in the Rules of Procedure, the hearing package provided to participants and on the Notice of Hearing. I could not accept the landlord's evidence package; however, I proceeded to consider the merits of this application based on verbal testimony of the parties.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

I heard the following undisputed testimony from the parties. The tenant began residing in the rental unit with another person approximately one year ago. The other person (the initial tenant) and the landlord had a verbal tenancy agreement and when that person moved out the tenant stayed in the rental unit. The tenant has had at least two other persons live in the rental unit with her after the initial tenant moved out. On December 5, 2009 the landlord issued two 10 Day Notices to End Tenancy for Unpaid Rent upon the tenant by posting the Notices on the door of the rental unit. The December 5, 2009 Notices provide that the tenant owed the landlord \$450.00 for rent for November 2009 and \$900.00 in rent for December 2009. The tenant subsequently paid the landlord \$440.00 on December 5, 2009 and \$450.00 was deposited into the landlord's bank account December 31, 2009. The landlord posted another 10 Day Notice upon the tenant's door on January 20, 2010 indicating rent of \$1,300.00 was outstanding. The tenant paid \$450.00 on February 1, 2010 and the landlord accepted

the rent for use and occupancy only, as communicated to the tenant via email and registered mail.

The landlord testified that when the initial tenant moved out of the rental unit, the landlord and tenant agreed that the tenant could continue residing at the rental unit, that the tenant would be responsible for paying the monthly rent of \$900.00 and collecting rent from roommates. The landlord also testified that when the tenant did not have roommates she had difficulty paying the rent and paid partial instalments and that the security deposit was applied to outstanding rent for August 2009.

The tenant testified that she and the landlord had an agreement that she was renting one-half of the rental unit and her "share" of the rent is \$450.00 and that the other \$450.00 in rent would be payable by the other person that occupies the rental unit. The tenant was of the position she did not owe the landlord rent because she is not responsible for paying \$900.00 per month. The tenant contended that she and the initial tenant would pay their rent separately to the landlord even though the tenancy agreement even was with the initial tenant. Upon enquiry, the tenant acknowledged that she had two people that lived with her after the initial tenant moved out and that those people were selected by her and that they paid her \$450.00 and she would pay the landlord a total of \$900.00 per month. The tenant submitted that she collected the rent from the other occupants and paid the landlord \$900.00 at the request of the landlord. The tenant claimed that other occupants could be chosen by either the tenant or the landlord.

The tenant attempted to raise other issues related to repairs, supply of firewood and poor relations with the neighbour; however, I refused to hear those issues as I did not find them relevant to the matter of unpaid rent.

The landlord responded to the tenant's submissions by stating that he had numerous conversations with the tenant after the initial tenant moved about the tenant's obligation to pay \$900.00 per month should she continue to reside in the rental unit and that it was

the tenant's responsibility to select roommates and collect money from the roommates. The landlord was of the position that he did not have tenancy relationships with the people the tenant permitted to occupy the rental unit and that he was not responsible for selecting other tenants-in-common for the rental unit.

Upon further enquiry, the tenant stated that she did not dispute the 10 Day Notice posted on January 20, 2010 as she believed the Notices to End Tenancy to be threats and because the landlord had previously issued Notices that were not enforced. The landlord had explained that he did not enforce the December 5, 2009 Notices because he had accepted partial rent payments after posting the Notices without specifying they were being accepted for use and occupancy only and he was of the belief that the tenancy had been reinstated. That is why the landlord served another Notice to End Tenancy on January 20, 2010.

Analysis

Under section 26 of the Act, a tenant must pay rent when due. A tenant must not withhold rent unless the tenant has the legal right to do so under the Act. Under section 46 of the Act, where a tenant fails to pay rent, a landlord may end a tenancy by issuing a Notice in the approved form. Under section 46 of the Act, and as indicated on the 10 Day Notice, where a tenant receives a 10 Day Notice, the tenant has five days to pay the outstanding rent or dispute the Notice. Otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end and the tenant will have to vacate the rental unit by the effective date.

I am satisfied that a Notice for \$1,300.00 in unpaid rent was served upon the tenant by posting it on the tenant's door on January 20, 2010. Since the Notice was posted on the door, it was deemed to be received by the tenant three days later in accordance with section 90 of the Act. Accordingly, the effective date of the Notice should read

February 2, 2010. An incorrect effective date does not invalidate a Notice; rather, the Act provides that the effective date is automatically changed to comply with the Act.

Since the tenant did not pay the amount of rent outstanding on the Notice or dispute the Notice within five days of receiving it, the tenant is conclusively presumed to have accepted that the tenancy would end and was required to vacate the rental unit by February 2, 2010. Since the tenant continues to occupy the rental unit, **the landlord is provided an Order of Possession effective two (2) days after service upon the tenant.** The Order of Possession may be enforced in the Supreme Court of British Columbia as an Order of that court.

The landlord has the burden to prove the tenant owes him the amount claimed in this application. The burden of proof is based on the balance of probabilities which means I must find the landlord's version of events to be more likely than not.

Upon hearing from both parties, I found the landlord to be clear and consistent with respect to the terms of the tenancy and the explanation of events that transpired. I found the tenant did not clearly and consistently describe the terms of the tenancy agreement and that her version of events and explanations changed or became more elaborate during the course of this proceeding; thus, I did not find the tenant very credible. Further, I did not find it likely that the tenancy pertained to only one-half of the rental unit or corroborating evidence that the landlord had tenancy agreements with the occupants the tenant had permitted to live with her after the initial tenant moved out. Therefore, I found the landlord's version of the tenancy agreement to be more likely than that of the tenant's version.

In accordance with the landlord's testimony, I find the landlord and tenant had established a tenancy agreement for the tenant to pay \$900.00 per month and that the tenant was permitted to have other occupants live with her but that any arrangement for sharing the cost of rent would be between the tenant and her roommate.

In light of the above, I find the landlord satisfied me that the tenant owes him \$1,750.00 in unpaid rent for the months up to and including February 2010 and the partial payment of \$450.00 received February 1, 2010 was accepted for use and occupancy only ($\$1,300.00 + \$900.00 - \$450.00 = \$1,750.00$). I also award the \$50.00 filing fee to the landlord. **The landlord has been provided a Monetary Order in the total amount of \$1,800.00 to serve upon the tenant.** The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord has been provided an Order of Possession effective two days after service upon the tenant. The landlord has been provided a Monetary Order in the amount of \$1,800.00 to serve upon the tenant.

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: February 18, 2010.

Dispute Resolution Officer