



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 was scheduled in response to the landlord's 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 and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

Is the landlord entitled to filing fee costs?

Background and Evidence

This tenancy commenced on September 1, 2009, rent is \$4,900.00 per month payable on the first of each month. The agreement also indicates rent is payable in advance of the first day of the month. A deposit in the sum of \$2,450.00 was paid sometime in August 2009.

The tenant confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery in the evening of January 14, 2010.

The Notice had an effective date of January 24, 2010. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$9,800.00 within five days after the tenant is assumed to have received the Notice. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

On the fifth day after service the tenant paid rent in the sum of \$9,800.00 and this cheque was returned NSF. When this rent was paid the landlord was in the office and thanked the tenant for the payment. On January 29, 2010 the tenant made a certified payment in the sum of \$9,850.00 for unpaid rent and the NSF fee owed.

On February 11, 2010 the tenant paid rent owed for February and on March 4, 2010, the tenant paid March rent owed; less \$500.00 he withheld in relation to a dispute over cleaning costs at the start of the tenancy.

The landlord provided copies of receipts dated January 19, January 29 and March 4, 2010, indicating that the rent payments were accepted for use and occupancy only. The tenant stated he first saw these receipts when he received the hearing package from the landlord. The landlord submitted that his administrator was to mail these receipts to the tenant; however, the administrator was not available to testify in relation to the mailing of the receipts.

The tenant stated that his January 19 payment was made with the full expectation that funds were in his account and that as soon as he was aware that the payment was NSF he paid the rent and fee in full.

Analysis

I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on January 24, 2010, pursuant to section 46 of the Act.

The tenancy agreement provides a term in relation to payment of rent which leads me to find that rent is due on the first day of each month

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant made a full payment on the fifth day after service of the Notice; however that payment was NSF. The tenant then made full rent arrears payment on January 29, 2010 and currently the amount in dispute is \$500.00 deducted from March rent claimed by the tenant for cleaning costs.

Residential Tenancy Branch Policy suggests that the issue of waiver arises when a landlord accepts rent from the tenant after the Notice to End Tenancy has been given. If the rent is accepted for any period after the effective date of the Notice, in this case,

January 24, 2010, the intent of the landlord is critical. Intent can be established based upon any receipts issued to the tenant, whether the landlord specifically informed the tenant that the money would be for use and occupation only and the conduct of the parties.

I have accepted the tenant's testimony that he first became aware of the receipts when he was served with the hearing documents and, in the absence of any evidence of the receipts having been mailed to the tenant, that the intent of the landlord in relation to payments made after the effective date of the Notice, was not made clear. As the effective date of the Notice was January 24, 2010, the intent of the landlord was not in question on January 19, 2010.

I find, based on the balance of probabilities and the absence of evidence to the contrary, that receipts were issued for use and occupancy only, but that there is reasonable doubt as to whether the tenant did receive these receipts issued for payments made after the effective date of the Notice. The initial interaction between the landlord and tenant on January 19 led the tenant to believe that payments of rent would satisfy the landlord and the tenancy could continue; however, it is the testimony of the tenant, that he did not receive any of the receipts issued and, in the absence of proof of delivery of these receipts to the tenant, I have accepted the tenant's testimony and find that the tenant first saw the receipts when he was served the hearing package

Therefore, I find that, effective January 29, 2010, the Notice to End Tenancy for Unpaid Rent issued on January 14, 2010 was of no force or effect and that the tenancy shall continue.

I find, pursuant to section 67 of the Act, that the landlord is entitled to compensation in the sum of \$500.00 for cleaning costs the tenant claims he is due and that was deducted from rent owed on March 1, 2010. Section 26 of the Act requires a tenant to pay rent when it is due unless the tenant has a right under the Act to make deductions. I heard conflicting testimony related to the cleaning and, in the absence of any addendum to the tenancy agreement, I find that the cleaning is a matter that is not part of this tenancy agreement and is outside the jurisdiction of the Act.

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

Conclusion

I find that the Notice to End Tenancy issued on January 14, 2010, is cancelled and that the tenancy has been reinstated. The tenancy shall continue until it is ended according to the provisions of the Act.

I find that the landlord has established a monetary claim, in the amount of \$550.00, which is comprised of \$500.00 in unpaid March 2010, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$550.00. 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.

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: March 16, 2010.

Dispute Resolution Officer