

DECISION

Dispute Codes:

CNR, OPR, MNSD, MNR, FF

Introduction

This was a cross-Application hearing.

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, compensation for damage or loss under the Act and return of the filing fee costs.

The landlord has made Application requesting an Order of possession for unpaid rent, a monetary Order for unpaid rent, to retain the deposit in partial satisfaction of the claim for compensation and filing fee costs.

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.

Preliminary Matters

The landlord served the tenant with evidence less than 5 days prior to the hearing. The landlord entered this evidence in response to the tenant's submission given to the landlord the week prior. The tenant had reviewed the evidence and I determined that any reference to the evidence, if not provided orally by the landlord, would result in the tenant having an opportunity to evaluate the evidence. This was not required during the hearing.

The tenant's Application included a claim for monetary compensation, which the tenant withdrew.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on May 26, 2010 be cancelled?

Is the landlord entitled to an Order of possession?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid in partial satisfaction of the claim for compensation?

Is the either party entitled to filing fee costs?

Background and Evidence

At the start of the hearing the parties agreed to the following facts:

- The tenant had worked for the landlord in Delta, until November 30, 2009;
- On December 15, 2009, the tenant was reinstated as an employee of the landlord, to work at a downtown Vancouver building;
- That on January 10 or 11, 2010, the tenant moved into the downtown building;
- That the tenant was given a \$200.00 per month rent reduction as part of his compensation as an employee;
- That since January 2010, the tenant has made rent payments in the sum of \$2,176.57 (February 3 - \$600.00; April 3, 2010 petty cash credit from the landlord - \$876.57; April 23, 2010, rent deduction from pay - \$700.00;)
- That on April 13, 2010, the tenant began a period of sick leave;
- That on May 26, 2010, the tenant was personally served the Notice ending tenancy for unpaid rent.

On May 31, 2010, the tenant applied disputing the Notice.

The landlord's Application indicated that the tenant has paid a deposit in the sum of \$644.00.

The landlord hired the tenant and entered into a verbal tenancy agreement. Rent was due on the first day of the month; employees are given different options as to what point in the month their credit is applied. The employment agreement with the tenant has not been terminated. Even if a tenant is on sick leave the landlord requires the tenant to pay the rent owed, less the monthly credit provided to employees.

The landlord submitted that rent owed was \$1,288.00; less a credit of \$200.00 per month, for a total to be paid by the tenant each month in the sum of \$1,088.00. The landlord pro-rated rent for January to \$623.00 owed.

The tenant submitted that when employed in Delta he had paid \$800.00 per month in rent and that it was not until the end of January or the beginning of February, 2010, that he was informed the rent owed for his unit in Vancouver was \$1,088.00.

The tenant acknowledged that he owes rent but disputed the amount owed.

The tenant testified that on March 23, 2010, he signed an agreement allowing deductions in the sum of \$700.00 to be made from his bi-weekly pay toward rent arrears; he alleged this document was signed under duress as the landlord forced him to sign. The landlord denied forcing the tenant to sign the document and submitted that the agreement was signed on April 13, 2010.

A tenant ledger to April 8, 2010, submitted by the landlord as evidence, had handwritten notations from the tenant indicating that he thought rent from January and February were to be paid by petty cash and "middle of next week, approx. date 21st," which the landlord interpreted as the tenant's agreement he would pay the arrears.

The tenant submitted that the landlord has "co-mingled" an employment contract with a tenancy agreement and that this should render the Notice invalid as it has been issued under the wrong section of the Act.

The tenant has submitted a complaint to the Employment Standards Branch in relation to matters dealing with his employment.

At the end of the hearing the landlord stated that they would accept rent owed of \$800.00 per month, but they maintained that the tenant understood rent was \$1,088 and that they would rely upon my decision as to rent owed.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that any matters in dispute related to the employment relationship are not before me. The tenant may have a complaint before another government agency disputing some terms of his employment contract, but I have considered only the Applications submitted by each party in relation to jurisdiction provided by the Residential Tenancy Act.

I find that the parties did enter into a verbal tenancy agreement and that the tenant owed the landlord monthly rent in the sum of \$1,288.00 less \$200.00 per month; whether he was ill or not. I base this decision on the payment of a deposit in the sum of \$644.00, which is one half of the full market rent owed in the sum of \$1,288.00; which I find supports the landlord's submission in relation to rent owed.

I also base this decision on the absence of any evidence that the tenant disputed the amount of rent owed, which he was aware of no later than early February 2010. The tenant also viewed the tenant ledger with the landlord and failed to dispute the amount owed as rent indicated on the ledger. Therefore, I find, on the balance of probabilities, that the tenant was aware that he owed monthly rent in the sum of \$1,288.00 less a monthly \$200.00 employee credit.

I find that since January 2010, the tenant owed rent, after each monthly deduction, in the sum of \$7,151.00 (January \$623.00 plus 6 X \$1,088.00), that the tenant has paid

\$2,176.57 and that the landlord is entitled to compensation for the balance of unpaid rent owed between January and July, 2010, in the sum of \$4,974.43.

I have not accepted the tenant's argument that the landlord has issued a Notice under the wrong section of the Act. The landlord confirmed that the tenant continues as an employee and has not been terminated from his position. As the tenant's employment has not been terminated, I find that the landlord was not in a position to issue a Notice under section 48 of the Act.

I also reject the submission that the landlord has "co-mingled" a tenancy agreement and contract for services, and find that the employment issues are separate from that of issues related to unpaid rent, for a person who continues in the employ of the landlord.

I find, pursuant to section 67 of the Act, that the landlord may retain the deposit in the sum of \$644.00 in partial satisfaction of the claim for unpaid rent.

I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of possession effective two days after service to the tenant.

As the landlord's claim has merit I find, pursuant to section 72(1) of the Act, that the landlord is entitled to filing fee costs.

As the landlord's request for an Order of possession has succeeded, I find that the tenant's Application is dismissed; the Notice issued on May 26, 2010, is of full force and effect.

As the tenant's claim is without merit, I decline filing fee costs to the tenant.

Conclusion

As I have determined that the tenant has failed to pay rent I find that the 10 Day Notice to End Tenancy for Unpaid Rent issued on May 26, 2010, is of full force and effect.

The tenant's Application for dispute resolution is dismissed without leave and, based upon the landlord's Application I have issued an Order of possession to the landlord, pursuant to section 55(1) of the Act.

I find the tenant owes the landlord \$4,974.43 in unpaid rent from January to July, 2010, inclusive.

I find the landlord is entitled to the \$50.00 filing fee.

The landlord will retain the deposit in the sum of \$644.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for **\$4,380.43**. 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.

The tenant's Application is dismissed.

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: July 19, 2010.

Dispute Resolution Officer