



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNR, OPR, MNR, MNDC, FF

Introduction

This hearing was scheduled in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent. The Tenant stated that he served the first page of his Application for Dispute Resolution by placing it in the mail slot at the Landlord's business office.

The Agent for the Landlord stated that the Landlord only received the first page of the Tenant's Application for Dispute Resolution so the Landlord did not know why the Tenant had filed his Application for Dispute Resolution. After being advised that the Tenant had applied to set aside the Notice to End Tenancy for Unpaid Rent, the Agent for the Landlord stated that she was prepared to respond to the issues raised by the Tenant in these proceedings.

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, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the service address noted on the Application, on December 22, 2010. The Agent for the Landlord cited a tracking number which corroborates this statement.

The Tenant stated that he has not received the registered mail sent to him by the Landlord nor has he received notification from Canada Post that registered mail has been sent to him.

After being advised that the Landlord has applied for a monetary Order for unpaid rent from December of 2010 and January of 2011 and for late fees from October, November, December and January, the Tenant indicated that he would not have additional evidence to present in relation to these claims even if this matter was adjourned to provide him with the opportunity to collect the documents that had been mailed to him.

On this basis, I determined that it was reasonable to proceed with the Landlord's Application for Dispute Resolution without adjourning the matter to a later date.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me. Relevant documentary evidence submitted by the Landlord to the Residential Tenancy Branch but not yet received by the Tenant was Landlord introduced into evidence via the Agent for the Landlord's oral testimony.

Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy should be set aside; whether the Landlord is entitled to an Order of Possession for unpaid rent; whether the Landlord is entitled to a monetary Order for unpaid rent; whether the Landlord is entitled to recover fees for paying rent late; and whether the Landlord is entitled to recover the fee from the Tenant for the cost of filing the Landlord's Application for Dispute Resolution, pursuant to sections 46(4), 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on November 23, 2009; that the Tenant is required to pay monthly rent of \$840.00 on the first day of each month; that as a term of the tenancy agreement the Tenant also agreed to pay a parking fee of \$45.00 on the first day of each month; and that the Tenant paid a security deposit of \$420.00.

The Agent for the Landlord and the Tenant agree that the Tenant did not pay any rent or parking fees for December of 2010 or January of 2011. The Tenant stated that he withheld his rent because the Landlord has not responded to his complaints regarding ants in the premises.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, was posted on the Tenant's door on December 02, 2010. The Tenant stated that he located the Notice to End Tenancy on his door on December 02, 2010. The parties agree that the Notice to End Tenancy declared that the Tenant had not paid rent of \$840.00 and that the Tenant must vacate the rental unit by December 12, 2010.

The Agent for the Landlord and the Tenant agree that the Tenant did not pay rent when it was due in October, November, December of 2010 or in January of 2011. The Agent for the Landlord stated that article 3(a) of the tenancy agreement that was signed by the

Tenant stipulates that the Tenant will be charged \$20.00 every time he is late paying his rent. The Tenant did not have his copy of the tenancy agreement with him, however he did not dispute the accuracy of the Agent for the Landlord's statement.

Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$840.00 plus parking fees of \$45.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord, whether or not the landlord complies with the *Act*, unless the tenant has the right under the *Act* to deduct a portion of the rent. The Tenant submitted no evidence to establish that he had a right to withhold any portion of his rent from December of 2010 or January of 2011.

Based on the undisputed evidence presented at the hearing, I find that the Tenant has not paid rent or parking fees for December of 2010 or January of 2011. As his tenancy agreement requires him to pay rent and parking fees and he is still occupying the rental unit, I find that the Tenant must pay \$1,770.00 in outstanding rent and parking fees to the Landlord.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. Based on the undisputed evidence presented at the hearing, I find that the Tenant received a Ten Day Notice to End Tenancy for Unpaid Rent on December 02, 2010, which directed the Tenant to vacate the rental unit by December 12, 2010, pursuant to section 46 of the *Act*.

As the Tenant withheld rent without legal authority, I find that the Landlord has grounds to end this tenancy in accordance with section 46 of the *Act*. On this basis I find that the Landlord is entitled to an Order of Possession.

Based on the undisputed evidence presented at the hearing, I find that the tenancy agreement required the Tenant to pay a fee of \$20.00 whenever he is late paying rent. As the Tenant did not pay his rent when it was due in October, November, and December of 2010 and in January of 2011, I find that the Landlord is entitled to collect late fees in the amount of \$80.00.

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.



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Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,900.00, which is comprised of \$1,770.00 in unpaid rent and parking fees; \$80.00 in late fees, 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 for the amount of \$1,900.00. 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.

I hereby grant the Landlord an Order of Possession that is effective at 1:00 p.m. on January 31, 2011. As the Tenant has been ordered to pay rent for January of 2011, I find it appropriate that he be permitted to remain in the rental unit until the end of January. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord retains the right to seek compensation for loss of revenue if the Tenant does not vacate the rental unit by January 31, 2011.

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: January 04, 2011.

Residential Tenancy Branch