



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 requested 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. I have considered all of the evidence and testimony provided.

Preliminary Matters

The property owner was not present at the start of the hearing; I requested the agent contact the owner, so that his testimony could be obtained. The landlord entered the hearing was affirmed.

The tenant testified that his 1 page of evidence was served to the landlord by his mother. The tenant could not provide the date this service occurred; who the evidence was given to, or the correct address for service. As I had no confidence in the tenant's submission, due to the lack of any verification of service such as a statement confirming the details of service, I set aside the evidence; the tenant was at liberty to provide oral testimony.

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 for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on December 1, 2011; rent is \$1,400.00 per month, due on the first day of each month. A \$700.00 security deposit and \$300.00 pet deposit was to be paid at the start of the tenancy. A copy of the agreement signed on November 26, 2011, was supplied as evidence.

On January 10, 2012, the property owner retained the agent to act on his behalf.

The landlord supplied a copy of the front and back of a cheque issued by the tenant on December 1, 2011, in the sum of \$2,400.00 for rent and deposits. A copy of a Returned Item Advice, dated December 7, 2011, issued by the landlord's bank, indicated the cheque was returned as insufficient funds.

The landlord testified that he has not received any money from the tenant; either rent or the deposits owed. The landlord had his uncle and a friend go to the unit, to talk with the tenant, but the tenant would not answer the door. On January 1, 2012, the tenant took a photograph of cash spread on his bed and text the photograph to the landlord as some sort of assurance he would pay his rent. The agent for the landlord confirmed having seen this photograph.

The agent and resident manager went to see the tenant on January 13, 2012, at which time the tenant agreed he would provide the agent with copies of his bank records, as proof of cash transfers in the amount of rent paid to that time. The agent did not receive this evidence from the tenant; nor has the property owner.

The property owner stated that on December 20, 2011, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 30, 2011, was served by registered mail to the tenant's rental unit address. The landlord provided a copy of the Canada Post tracking information which showed the mail had been successfully delivered on December 23, 2012.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,400.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was 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.

The Notice included the amount owed for the pet and damage deposits plus December, 2011 rent due.

The tenant testified that he did not receive the 10 Day Notice for Unpaid Rent until he received the Notice of hearing package, sent to him by registered mail and received on January 17, 2012. The tenant stated that he does not know who retrieved the registered mail that was picked up on December 23, 2011. The tenant stated that at the

start of the tenancy he told the landlord that he would not receive mail at the rental unit and that he provided the landlord an alternate mailing address. The landlord denied having received any alternate mailing address from the tenant.

The tenant did not dispute the 10 Day Notice he received as part of the hearing package, as he called the Residential Tenancy Branch and was told he should attend this hearing to make his submissions.

The tenant stated that he made 2 cash payments to a friend of the landlord's; one payment on December 22, 2011, in the sum of \$2,440.00 and another on January 3, 2012, in the sum of \$1,731.00. The tenant stated that he gave cash to a male, who issued him a receipt for payment. The landlord stated he had never heard of the individual who the tenant claimed to have paid and that he has not received rent or deposit money from the tenant. The landlord and agent have not seen copies of any receipts issued for rent payments.

Analysis

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find the version of events provided by the landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the landlord over the tenant.

The tenant stated he did not receive mail at his residential address; and that he did not receive the 10 Day Notice Ending Tenancy that was successfully delivered to his residential address on December 23, 2011. Yet, the tenant did receive registered mail sent to the same address in January, 2012. I found this assertion lacked credibility and consistency; either tenant receives mail at another address or he does not. It appeared that the tenant was somewhat selective as to which mail he would confirm he had received. Therefore, as a result of what I find is a lack of credibility on the part of the tenant, I have relied upon the testimony and evidence of the landlord.

Section 88 of the Act provides acceptable methods of service for documents such as registered mail to the address where a tenant resides. Therefore, in the absence of

reliable testimony on the part of the tenant, the evidence of receipt of registered mail by the tenant at the same address in January, proof that the registered mail sent in December was successfully delivered I find, on the balance of probabilities, that the tenant did receive the 10 Day Notice Ending Tenancy for Unpaid Rent on December 23, 2011, the date the mail was successfully delivered.

Even if I found that the tenant had not received the Notice on December 23, 2011; the tenant has provided no evidence supporting his submission that he paid all rent and deposits owed, to a male friend of the property owner. Once the tenant received the Notice of Hearing package on January 17, 2012, he had an opportunity to respond to the landlord's application by gathering evidence identifying the person he had paid, by obtaining the bank records he had offered to the agent and any other evidence that he had in fact paid his rent. The tenant did not do so.

Further, I found the testimony of the landlord's agent consistent and believable. For example, the agent challenged the tenant when he testified that he had offered rent payment receipts; both the agent and resident manager gave testimony in a forthright manner that differed from that of the tenant, asserting that the tenant had promised copies of bank statements, which he then failed to provide. I also considered the NSF statement for the one cheque written by the tenant.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on December 23, 2011, I find that the earliest effective date of the Notice is January 2, 2012.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was January 2, 2012.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on January 2, 2012, pursuant to section 46 of the Act.

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. In the circumstances before me I have no evidence that the tenant exercised either of these rights, therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$2,800.00 for December 2011 and January 2012, and that the landlord is entitled to compensation in that amount.

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.

No Order can be made in relation to an unpaid deposit; a landlord may issue a Notice ending tenancy for cause, should a tenant fail to pay the required deposits.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. 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 \$2,850.00, which is comprised of unpaid December, 2011 and January, 2012, 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 \$2,850.00. 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: January 30, 2012.

Residential Tenancy Branch