



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

On July 21, 2011 both parties appeared in The Supreme Court of British Columbia (the Court) under the *Judicial Review Procedure Act*. On July 21, 2011 the Court set aside decisions issued by the Residential Tenancy Branch (RTB) under file numbers: 768398 and 768777. The court ordered that a new hearing be set by the RTB with respect to file number 768777 and the 10 Day Notice to End Tenancy for Unpaid Rent dated February 2, 2011 upon notice to the landlord, care of its agent, and the tenant. The court further ordered that the landlord's claim for unpaid rent include all rent unpaid to the date of the new hearing.

A new file number was assigned to the landlord's application and on March 2, 2012 the RTB sent the Notice of Hearing and Landlord's Application for Dispute Resolution to each party via registered mail. The new hearing was scheduled for 3:00 p.m. on March 28, 2012 and both parties were instructed by way of the Notice of Hearing to serve any evidence they intended to rely upon to the RTB and the other party.

On March 28, 2012 the landlord and the landlord's agents appeared at the hearing but the tenant did not. The landlord served evidence upon the RTB and provided a registered mail receipt indicating the landlord's evidence was sent to the tenant at the rental unit via registered mail on March 21, 2012. The landlord's agent also testified that he personally posted the landlord's evidence on the door of the rental unit on March 21, 2012.

The landlord's agent testified that the tenant has not returned possession of the rental unit to the landlord or landlord's agent and personal property remains at the rental unit. I was satisfied the tenant has been served with the Notice of Hearing and Landlord's Application for Dispute Resolution and I proceeded to hear from the landlord without the tenant present. Although the landlord served the landlord's evidence upon the tenant one day late, I deemed the service of the landlord's evidence to be sufficient and I have considered the evidence in making my decision.

During the hearing the landlord's agent requested the monetary claim be amended to \$25,000.00 to include unpaid rent up to and including the month of March 2012. The

landlord's agent submitted that the total unpaid and loss of rent was well in excess of \$25,000 but limited the amended monetary claim to the statutory limit of \$25,000.00. As the Court had ordered the landlord's claim include unpaid rent up until the date of the new hearing, and the tenant was present for the Court proceeding, I find the tenant has been put on notice that the landlord's monetary claim shall include all unpaid rent up to the date of the new hearing. Therefore, I have accepted the landlord's request to amend the application.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent or loss of rent in the amount of \$25,000.00?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

I was presented the following undisputed evidence:

- The tenant and the former co-owner of the property entered into a written fixed term tenancy agreement that commenced September 1, 2008 and expired September 30, 2009 for the monthly rent of \$2,100.00 and payment of a \$1,050.00 security deposit.
- The fixed term tenancy agreement indicated that the tenant would have to vacate the rental unit at the end of the fixed term unless a renewal term was mutually agreed by the parties in writing.
- After the fixed term tenancy agreement expired the tenant and former co-owner agreed to continue with a tenancy for the monthly rent of \$1,700.00 although it is uncertain as to whether a written tenancy agreement was executed.
- On March 23, 2010 the former co-owner posted a 10 Day Notice to End Tenancy for Unpaid Rent on the rental unit door indicating the tenant owed \$10,310.00 in rent as of March 8, 2010.
- On January 28, 2011 the co-owners and their agent issued a 10 Day Notice to End Tenancy for Unpaid rent indicating the tenant owed \$11,900.00 in rent as of January 1, 2011.
- The January 28, 2011 Notice was personally served upon an occupant of the rental unit by the landlord's agent on January 28, 2011.

The Notice dated January 28, 2011 is the Notice that was the subject of cross applications (file numbers 768398 and 768777) for which the decisions were later set aside by the Court.

I also heard that as of February 1, 2011 the former co-owner transferred his ownership in the property to the landlord and the landlord is now the sole registered owner of the property.

I heard that in April or May 2011 the landlord's agent was of the belief the tenant had vacated the rental unit and changed the locks. However, the tenant re-appeared and confirmed to the landlord's agent that he was still occupying the rental unit. Currently, the rental unit looks to be largely vacated; however, it looks very similar to that in April or May when the tenant stated he was still occupying the rental unit. On the outside of the property a vehicle and a portable hot dog cart are visible.

The landlord is seeking an Order of Possession effective two days after service.

With respect to the landlord's monetary claim, the landlord explained that the 10 Day Notice issued January 2011 includes unpaid rent for the months of July 2010 through January 2011 at \$1,700.00 per month. Taking into account the unpaid rent or loss of rent for February 2011 through March 2012 the landlord's loss of rent is \$34,000.00 as of the date of this hearing. The landlord is requesting a Monetary Order for the statutory limit of \$25,000.00 and authority to retain the tenant's security deposit.

Documentation provided by the landlord included copies of:

- the fixed term tenancy agreement for the term of September 2008 through September 2009;
- the 10 Day Notices issued in March 2010 and January 2011;
- a signed Proof of Service of the March 23, 2010 10 Day Notice;
- a written statement of the former co-owner dated April 26, 2011;
- an undated letter from the tenant to the former co-owner with a handwritten ledger for the period of June 2009 through February 2010;
- the Order of the Court dated July 21, 2011 indicating both the tenant and landlord appeared before the court; and,
- the registered mail receipt for service of the landlord's evidence for this proceeding.

Analysis

I accept that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent dated January 28, 2011 in a manner that complies with section 88 of the Act. Although the tenant initially filed to dispute to the Notice, the decision issued with

respect to the tenant's application has since been set aside by the Court. In the absence of any testimony or evidence from the tenant I accept that the 10 Day Notice that is before me is accurate and otherwise valid.

Having heard the tenant did not pay the full amount of the outstanding rent, and the decision issued with respect to the tenant's application to cancel the Notice has been set aside by the Court, I uphold the Notice and find the tenancy has ended for unpaid rent. I further find the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession that is effective two (2) days after service upon the tenant.

In the absence of evidence to the contrary I accept that the tenant's monthly rent was \$1,700.00 and that the tenant has not paid rent since before July 2010. Having accepted the accuracy and validity of the 10 Day Notice issued January 28, 2011 I accept that the tenant owed the landlord rent of \$11,900.00 as of January 2011. In the absence of any evidence to the contrary I also accept the tenant has continued to occupy or possess the rental unit up to the date of this hearing. Therefore, I accept the landlord's submission that the landlord's total loss of rent is well in excess of \$25,000.00.

In light of the above, I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord and I provide the landlord with a Monetary Order for the balance of rent owed, up to the statutory limit, of \$25,000.00.

I further award the landlord the filing fee paid for this application.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord has been provided a Monetary Order for unpaid rent in the amount of \$25,000.00 plus the filing fee of \$100.00. The landlord has been authorized to retain the tenant's security deposit.

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 29, 2012.

Residential Tenancy Branch