



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, an order of possession for landlord's use of property, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

Matters related to this application were originally heard May 9, 2012. As the tenant did not receive the hearing documents prior to the original hearing, a review hearing was granted in order to allow both parties to attend.

This tenancy began November 15, 2010 with monthly rent of \$800.00 and the tenant paid a security deposit of \$400.00.

On March 1, 2012 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property; the tenant has not filed to dispute this notice.

On April 5, 2012 the landlord served the tenant with a 10 day notice to End Tenancy for Unpaid rent; the tenant has not filed to dispute this notice.

The landlord stated that the tenant then did not pay the full \$1400.00 April 2012 rent and handed the landlord a cheque for \$700.00 and advised the landlord to use the security deposit for the \$700.00 balance; the landlord declined. The landlord stated that the tenant has also advised the landlord that she would not be vacating the rental unit by the effective end date of the 2 month notice which is May 31, 2012.

The landlord acknowledged that the tenant had sent a \$1400.00 money order for the June 2012 rent however he has not cashed this money order. The landlord stated that the \$1400.00 per month rent for April, May and June 2012 remains unpaid.

The tenant testified that she had every intention of paying the rent in full and that the rent was short in April due to a mix up with her disability cheque. The tenant stated that she had a \$1400.00 money order for the May 2012 rent but the landlord did not come to pick it up. The tenant stated that she had also sent the landlord a \$1400.00 money order for the June 2012 rent. The tenant maintained that the May and June money orders show that she had every intention of paying the rent to the landlord. The tenant did not comment on not having or ever providing the \$700.00 balance of the April 2012 rent.

The tenant stated that the landlord had never served her with the notices to end tenancy either on March 1, 2012 or April 5, 2012 as the landlord claimed and that had she received the notices she would have disputed them. The tenant stated that she did not receive copies of the notices to end tenancy until May 10, 2012 when she went to the post office to pick up her mail which had been stopped, one day after the original May 9, 2012 hearing. The tenant stated Residential Tenancy Branch staff advised her that her review application would 'stop the notices' and that she was never advised that she should still dispute either notice.

The landlord stated that the notices were served on the tenant, in person and with a witness; the tenant maintained that this was not true. The landlord's witness was affirmed and testified that he was present with the landlord on March 1, 2012 and again April 5, 2012 when the landlord served the notices on the tenant; the tenant maintained that this was not true. The tenant was adamant that the landlord in early March verbally gave her notice to vacate but that proper notice was never given.

The tenant recalled the landlord being at the rental unit with his father but that a notice was not served. The landlord acknowledged that in February 2012 when he went to pick up the rent that his father was with him. The landlord and landlord's witness again both reiterated under oath that the notices had been served in person on the tenant on the dates specified with both of them present; the tenant again refuted this testimony as false.

The tenant referred to other matters in relation to this tenancy however those matters are not a part of the landlord's application. The tenant attempted to reach an agreement with the landlord on when the tenancy would end however the landlord was not open to extending the tenancy any longer and requested an order of possession effective 2 days after service upon the tenant. The tenant responded by stating that if served with an order of possession she 'I'll take it to the Supreme Court to have it over turned'.

The tenant at the end of the hearing requested to have the landlord's counsel provide their phone number so that the tenant could call and see if a potential agreement could be reached regarding the tenancy.

The tenant questioned the landlord's motives for the 2 month notice for landlord's use of property however whether or not the landlord has acted in good faith is not a part of this application may possibly be determined once the tenancy ends.

Analysis

Section 49(8) of the Act states that **within 15 days of receiving** a Notice to End Tenancy for Landlord's Use of Property, a tenant must apply for dispute resolution. If the tenant fails to file to dispute the notice, then under section 46(5)(a)(b) of the Act they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date(s) of the Notice(s) and I find that the landlord is entitled to an order of possession and a monetary order for unpaid rent.

I favour the testimony of the landlord and landlord's witness when they stated that they served the tenant in person with the notices to end tenancy. However, if one considers that the tenant may not have received the notices until May 10, 2012, the tenant still did not make an application through this office to dispute the notices. I do not find the tenant's testimony where she simply repeats that the landlord and landlord's witness are being untruthful to give sufficient weight to the tenant's testimony. It must also be considered whether or not the tenant really did not understand how to dispute the notices, as information on each notice clearly outlines what steps a tenant needs to take to dispute a notice. This coupled with the tenant's comment of *'I'll take it (the order of possession) to the Supreme Court to have it over turned'* would leave one to believe that the tenant may have more knowledge of the process than she indicated.

Accordingly I find that the landlord is entitled to a monetary order for \$1400.00 for the April 2012 rent.

In regards to the \$1400.00 money order for the June 2012, as the tenant remains in the rental unit and this rent is owed to the landlord, I find that the landlord is entitled to this money. As the landlord now has an order of possession based on the notice to end tenancy for unpaid rent, **acceptance of the June 2012 rent will not reinstate this tenancy.**

And, as the notice to end tenancy for unpaid rent has superseded the 2 month notice for landlord's use of property and effectively ended the tenancy, the 2 month notice is no longer valid and the tenant will not be entitled to 1 month's rent compensation based on the 2 month notice.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I hereby grant the landlord an **Order of Possession**, effective **2 days** after service of the Order upon the tenant(s). This Order must be served on the tenant(s) and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim for \$1400.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$700.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$750.00**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: June 14, 2012

Residential Tenancy Branch