



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR

For the landlord: MNR, OPR, MNSD, FF

Introduction

This hearing dealt with cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”).

The landlord applied for a monetary order for unpaid rent, for an order of possession for the rental unit due to unpaid rent, for authority to retain the tenant’s security deposit and to recover the filing fee for the application.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me.

The landlord stated that he had not received the evidence of the tenant. The tenant was unable to confirm that he served his evidence on the landlord. I therefore have not accepted the tenant’s evidence for consideration.

I have reviewed all other oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue-The testimony of the tenant was difficult to hear as his voice was muffled and the transmission was unclear. The tenant explained that he was calling from a payphone.

The tenant continually interrupted the telephone conference call hearing, despite repeated admonitions to cease his interruptions. I informed the tenant that if he continued the interruptions, I would place him in a mute mode, explaining what that meant. It became necessary to place the tenant in that mute mode as he continued with his interruptions and he was not allowed to return as his testimony had been completed.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order, for authority to retain the tenant's security deposit and to recover the filing fee?

Background and Evidence

This two month tenancy started on February 28, 2011, continues now on a month to month basis, monthly rent is \$575.00 and the tenant paid a security deposit of \$287.50 in February, 2011.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord stated that on June 5, 2012, the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent, via posting on the door, listing an amount of \$600.00 as unpaid rent as of June 1, 2012. The effective move out date listed on the Notice was June 13, 2012. Section 90 of the Act states that a document served in this manner is deemed served three days later. Thus the effective move out date is automatically corrected to June 18, 2012.

The landlord submitted that the tenant has not made a rent payment since issuance of the Notice.

The landlord's relevant evidence included a rent roll for the tenant, a tenancy agreement, the Notice and a copy of the receipt of \$1125.00 on May 31, 2012.

In response, the tenant claimed that the rent was fully paid through June 2012. The tenant stated he had a receipt from the landlord showing payment of \$1125.00 on May

31, 2012. The tenant also submitted that a government issued cheque of \$375.00 shows a rent payment for June 2012.

The landlord agreed that they received \$1125.00 on May 31, 2012, but that said amount was applied toward the outstanding balance of \$1150.00 for unpaid rent for April and May 2012. The landlord reiterated that they have not been paid any rent for June.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Landlord's Application:

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice. Where a Notice is disputed, the tenant must be able to show that he does not owe to rent to the landlord or had some other legal right to withhold rent.

Upon hearing from the parties and considering the landlord's evidence, I am satisfied that the tenant owed the landlord rent when the Notice was issued, that he did not pay the outstanding rent to the landlord within five days of receiving the Notice and the tenant did not establish that he had the legal right to withhold the rent owed.

I therefore find that the landlord is entitled to an order of possession effective two days after service on the tenant.

The order of possession is enclosed with the landlord's Decision. This order is a legally binding, final order, and may be filed in the Supreme Court of British Columbia should the tenant fail to comply by vacating the rental unit.

I find that the landlord has established a monetary claim for \$650.00 for unpaid rent for June 2012 and recovery of the filing fee of \$50.00, which I have granted due to the landlord's successful application.

As the landlord's request, I allow the landlord to retain the tenant's security deposit of \$287.50 in partial satisfaction of the monetary claim and I grant the landlord a monetary order pursuant to section 67 of the Act for the balance due of \$362.50.

The monetary order for \$362.50 is enclosed with the landlord's Decision. This Order is a legally binding, final Order, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply.

Tenant's application:

Due to the above, the tenant's Application for Dispute Resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the Notice to End Tenancy issued is valid and enforceable.

Conclusion

The landlord is granted an order of possession and a monetary order in the amount of \$362.50

The tenant's application is dismissed, without leave to reapply.

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 27, 2012.

Residential Tenancy Branch