



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's 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 damages, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

At the outset of the hearing the Landlord was advised that his application for compensation for damages to the rental unit was being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act)*, because his Application for Dispute Resolution did not provide sufficient particulars of his claim for compensation for damages, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion, I was strongly influenced by the absence of any reference to the nature of the alleged damages on the Application for Dispute Resolution. I find that proceeding with the Landlord's claim for damages at this hearing would be prejudicial to the Tenant, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claims. The Landlord retains the right to file another Application for Dispute Resolution in which he claims compensation for damages.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing intended for the Respondent with the initials "B.H." was posted at the rental unit on June 15, 2012. The Respondent with the initials "G.H." started that he located two copies of the Application for Dispute Resolution and Notice of Hearing outside his door on June 15, 2012, and that the Respondent with the initials "B.H." was living at the rental unit on that date. On the basis of the testimony of both parties, I find that these documents have been served to the Respondent with the initials "B.H." in accordance with section 89 of the *Residential Tenancy Act (Act)* and that it would be appropriate to proceed with the hearing even though this Respondent did not appear at the hearing.

The Respondent with the initials "G.H." appeared at the hearing. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Respondent with the initials "G.H." was disruptive during the first portion of the hearing and would not respond to directions to refrain from interrupting the proceedings. He was therefore, for a period of approximately five minutes, placed on "mute mood" which

prevented him from speaking during the hearing, although he was able to hear the proceedings. When the Respondent with the initials "G.H." was subsequently provided with the opportunity to speak, he acted appropriately for the remainder of the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Respondent with the initials "G.H." agree that the Respondent with the initials "B.H." and a co-tenant moved into the rental unit on October 17, 2011; that they paid a security deposit of \$400.00; that they agreed to pay monthly rent of \$800.00 by the first day of each month; that the co-tenant vacated the rental unit at the end of May of 2012; and that neither Tenant gave notice to end this tenancy.

The Landlord stated that the Respondent with the initials "B.H." moved out of the rental unit at the end of February. The Respondent with the initials "G.H." stated that the Respondent with the initials "B.H." is his son; that the Respondent with the initials "B.H." did not move out of the rental unit although he stopped residing at the premises for a period of time while he was incarcerated; and that the Respondent with the initials "B.H." resumed residency at the rental unit after he was released from jail sometime during the latter part of May of 2012.

The Landlord and the Respondent with the initials "G.H." agree that Respondent with the initials "G.H." moved into the rental unit in late February or early March of 2012, and that he made some rent payments to the Landlord. The Landlord stated that while he did not object to the Respondent with the initials "G.H." living in the rental unit, he did not enter into a verbal or a written tenancy agreement with him. The Respondent with the initials "G.H." contends that he has a tenancy agreement with the Landlord because he pays a portion of the rent.

The Landlord stated that the Tenant still owes \$800.00 in rent for July of 2012, \$400.00 in rent for June of 2012, and \$350.00 in rent for May of 2012. The Landlord submitted no evidence to corroborate this testimony.

The Respondent with the initials "G.H." stated that he believes \$800.00 in rent for July of 2012, \$400.00 in rent for June of 2012, and \$250.00 in rent for May of 2012 is outstanding. He stated that his son has not been able to pay his portion of the rent because the Landlord will not fill out papers needed for his son to get funding for financial assistance.

The Landlord and the Respondent with the initials "G.H." agree that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of May 25, 2012, was posted on the door of the rental unit on May 15, 2012. The Respondent with the initials "G.H." stated that he located the Notice on May 15, 2012.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Landlord, the Respondent with the initials "B.H.", and a third party who is not a party to these proceedings entered into a tenancy agreement which requires the Respondent with the initials "B.H." and the co-tenant to pay monthly rent of \$800.00 by the first day of each month.

I find that there is insufficient evidence to conclude that the Respondent with the initials "G.H." and the Landlord entered into a tenancy agreement. In reaching this conclusion I was heavily influenced by the testimony of the Landlord, who denies entering into a tenancy agreement. In reaching this conclusion I placed little weight on the fact that the Respondent with the initials "G.H." paid some rent to the Landlord as paying rent on behalf of a child does not necessarily confer tenancy status on the party making the payment.

As there is no dispute that the Respondent with the initials "G.H." was living in the rental unit and I have not concluded that he has a tenancy agreement with the Landlord, I find that he was an occupant in the rental unit, who has none of the rights or obligations of a tenant. As the Respondent with the initials "G.H." does not have any of the obligations of a tenant, including the obligation to pay rent, I decline to name him in any Orders arising from these proceedings.

On the basis of the testimony of the Respondent with the initials "G.H.", I find that the Tenant still owes \$800.00 in rent for July of 2012, \$400.00 in rent for June of 2012, and \$250.00 in rent for May of 2012. As the Landlord has submitted no evidence to corroborate the testimony that the Tenant actually owes \$350.00 in rent for May of 2012, I cannot conclude that he owes more than \$250.00 for May. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,450.00 in outstanding rent to the Landlord.

In reaching this decision I have placed no weight on the argument that the Landlord has not completed papers needed for the Tenant to obtain financial assistance, as the Landlord has no obligation to assist the Tenant in securing rent. This is particularly true when the Tenant has been incarcerated for a period of the tenancy and was not actually residing at the rental unit.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the undisputed evidence presented at the hearing, I find that the a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on May 15, 2012.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

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.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon 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 \$1,500.00, which is comprised of \$1,450.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security deposit, in the amount of \$400.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,100.00. 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: July 05, 2012.

Residential Tenancy Branch