



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, MNR, FF

Introduction

The hearing was scheduled in response to an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Cause, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They 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.

The Landlord submitted a letter from the City of Surrey to the Residential Tenancy Branch, a copy of which was served to the Tenant. The Tenant acknowledged receipt of this document and it was accepted as evidence for these proceedings.

The Landlord submitted a Proof of Service of a Ten Day Notice to End Tenancy, a copy of which was not served to the Tenant. As this document was not served to the Tenant it was not accepted as evidence for these proceedings.

The Tenant submitted no evidence.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for Cause, a monetary Order for unpaid rent, and to recover the fee for filing the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Act*.

Background and Evidence

The Primary Agent for the Landlord and the male Tenant agree that the Landlord and the Tenant entered into a verbal tenancy agreement; that the Tenant was obligated to pay rent of \$375.00 per month; and that the Landlord would periodically reduce the rent in exchange for repairs done to the rental unit. The Primary Agent for the Landlord stated that rent was due on the first day of each month and the Tenant testified that he was not required to pay it on any specific day of the month, providing it was paid sometime during the month it was due.

The Primary Agent for the Landlord stated that his father, who is the Landlord, advised him that he received no rent for March, April, May, or June of 2012. The male Tenant stated that the Tenant paid \$125.00 in cash for rent for March of 2012, \$150.00 in cash for rent for April of 2012, \$275.00 in cash for rent for May of 2012, and \$175.00 in cash for rent for June of 2012.

The Tenant stated that his rent payments were reduced in March by \$250.00, in April 225.00, in May by \$100.00, and in June by \$200.00 as compensation for repairs made to the rental unit. The Primary Agent for the Landlord stated that he does not know if his father reduced the rent during those months, as he was simply told the rent was not paid.

The Primary Agent for the Landlord stated that he always paid his rent in cash and that he never received receipts for the payments. The Primary Agent for the Landlord stated that he believes his father provided receipts for rent payments made in cash but he does not have those receipts with him nor were any submitted in evidence.

The Primary Agent for the Landlord and the male Tenant agree that a One Month Notice to End Tenancy for Cause was personally served to the Tenant on May 01, 2012. A copy of the One Month Notice to End Tenancy was not served in evidence, however the parties agree that the Notice was signed and dated May 01, 2012; that it had a declared effective date of May 31, 2012; and that the reason for ending the tenancy was that the rental unit/site must be vacated to comply with a government order.

The male tenant stated that he did not vacate the rental unit in accordance with the Notice to End Tenancy and that he did not file an Application for Dispute Resolution seeking to set aside the Notice.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord and the male Tenant entered into a verbal tenancy agreement which required the Tenant to pay monthly rent of \$375.00 and that the parties periodically agreed to reduce the rent in exchange for repairs made to the rental unit.

As the parties cannot agree on the date rent was due and there is no evidence to corroborate the Primary Agent for the Landlord's statement that it was due by the first day of each month or to corroborate the male Tenant's statement it had to be paid sometime during the month it was due, I find that rent was due no later than the last day of each month.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In regards to the claim for unpaid rent of \$1,500.00, the

burden of proving that rent was not paid in cash, as claimed by the Tenant, rests with the Landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts help to establish when a rent payment has not been made. When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made. When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant will provide a receipt for a cash payment that has been made.

In these circumstances the Landlord has submitted no documentary evidence, such as previous receipts, to corroborate the claim that Landlord provided receipts for cash payments or to refute the Tenant's testimony that receipts were not provided. I find that the Landlord has submitted insufficient evidence to show that rent receipts were provided when rent was paid in cash. I therefore find that the Landlord has submitted insufficient evidence to refute the Tenant's testimony that the Tenant paid \$125.00 in cash for rent for March of 2012, \$150.00 in cash for rent for April of 2012, \$275.00 in cash for rent for May of 2012, and \$175.00 in cash for rent for June of 2012.

I also find that the Landlord submitted insufficient evidence to refute the Tenant's testimony that the Landlord authorized him to reduce his rent by \$125.00 in cash for rent for March of 2012, \$150.00 in cash for rent for April of 2012, \$275.00 in cash for rent for May of 2012, and \$175.00 in cash for rent for June of 2012. In reaching this conclusion I was heavily influenced by the Primary Agent for the Landlord's testimony that his father did periodically agree to reduce the rent in compensation for repairs and by his testimony that he does not know if his father agreed to reduce the rent in these four months.

I find that the Landlord submitted insufficient evidence to show that the Tenant owes rent for March, April, May, or June of 2012 and I therefore dismiss the Landlord's claim for a monetary Order for unpaid rent.

On the basis of the undisputed evidence presented at the hearing, I find that on May 01, 2012 the male Tenant received a One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*, which declared that the Tenant must vacate the rental unit by May 31, 2012.

Section 47(2) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Tenant received this Notice on May 01, 2012, and rent is due no later than the last day of each month, the earliest effective date of the Notice is June 29, 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 June 29, 2012.

Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that tenants must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. As there is no evidence that the Tenant filed an application to dispute the Notice to End Tenancy, I find that the Tenant accepted that the tenancy was ending on June 29, 2012, pursuant to section 47(5) of the *Act*.

I find that the Landlord's Application for Dispute Resolution has some merit and I therefore find that the Landlord is entitled to recover the fee for filing this Application.

Conclusion

I 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 \$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 for the amount of \$50.00. 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 23, 2012.

Residential Tenancy Branch