



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and money owed or compensation for damage or loss and to recover the filing fee.

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

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

The landlord said that he served his amended application for dispute resolution on the tenants via personal delivery on July 23, 2012. The tenant did not disagree.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order and to recover the filing fee?

Background and Evidence

There was no written tenancy agreement for this tenancy. The landlord explained that he had only been dealing with this tenancy and the tenants since December 2011, when his business partner and co-owner of the residential property became seriously ill,

requiring months of and continuing hospitalization. The landlord further explained that his business partner dealt with the tenants originally.

I heard testimony from the tenant that this tenancy began about a year ago. The landlord did not disagree. The parties agreed that monthly rent was \$1300.00, payable on the first day of the month. The tenant said that he paid a security deposit of \$650.00 and the landlord said that he did not know if the tenants paid a security deposit.

The landlord submitted that on July 2, 2012, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by personal delivery, listing unpaid rent of \$1300.00 as of July 1, 2012. The effective vacancy date listed on the Notice was July 12, 2012.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

The landlord stated that the tenant made a payment of \$1000.00 on July 4, 2012, and has paid nothing since that time, leaving a rent deficiency of \$300.00 for July and \$1300.00 for August, due to the lack of a payment on August 1.

The landlord also claimed for unpaid utilities of \$633.55, which was the water bill for the rental unit. The landlord said that he did not discover that the water bill was unpaid until he received the tax bill. The landlord stated that the tenants were responsible for paying for their own water usage.

In response, the tenant presented several arguments. He said the landlord agreed to accept the remaining balance of \$300.00 in two weeks, which he attempted to do; however the landlord refused this payment.

Additionally, the tenant stated that the attending landlord was not his landlord and that his landlord was the person referred to by the attending landlord as his business partner. As such, the tenant said that he did not have any obligations to this landlord.

The tenant said that he had difficulties with the attending landlord, as the tenant had an arrangement with the original landlord to accept rent payments during the month.

As to the issue of the unpaid water bill, the tenant also stated that water was included with the monthly rent, which was the arrangement made with the original landlord. Therefore the tenant denied owing this amount.

The tenant acknowledged not filing for dispute resolution after receipt of the Notice.

Analysis

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

I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or apply to dispute the Notice within five days of service and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I do not accept the tenant's testimony that he attempted to pay the remaining \$300.00, but that this amount of rejected by the landlord. I also find the tenant did not pay rent for the month of August.

As to the issue of the unpaid water bill, although the *Act* stipulates that a landlord is responsible for providing a written tenancy agreement, a verbal tenancy agreement is still enforceable. Having said that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. As the parties did not have a written tenancy agreement which clearly communicated that the tenants were to pay for their own water and the parties disagree as to that term, I find that the monthly rent of the tenants included water usage and were not responsible for the water bill.

Conclusion

I find that the landlord is entitled to an order of possession effective two days after service upon the tenants.

I grant the landlord a final, legally binding order of possession, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement.

I dismiss the landlord's claim for the unpaid water bill of \$633.55, without leave to reapply.

I find that the landlord has established a total monetary claim of \$1650.00 comprised of the balance of the outstanding rent for July for \$300.00, August for \$1300.00 and the \$50.00 filing fee paid by the landlord for this application.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for \$1650.00, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement.

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: August 02, 2012.

Residential Tenancy Branch