



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant. The landlord had arranged for witness to attend but the witness was never called to provide testimony.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and/or for cause; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on October 30, 2010 as a month to month tenancy with a current monthly rent of \$1,500.00 due on the 1st of each month with a security deposit of \$375.00 paid.

The parties agree the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on June 13, 2012 with an effective vacancy date of July 31, 2012 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk and the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord. The tenant testified that he did not file an Application to Dispute the 1 Month Notice to End Tenancy.

The parties agree the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on July 23, 2012 with an effective date of August 2, 2012 for unpaid rent in the amount of \$1,335.00. The landlord clarified that this amount included unpaid rent for September 2011(\$500.00); June 2012 (\$500.00); July 2012 (\$335.00). The landlord further clarified that his claim included unpaid rent for August 2012 in the amount of \$1,500.00.

The landlord testified that he did receive a payment in the amount of \$1,125.00 on August 9, 2012 from one of the tenant's roommates. The landlord testified the outstanding arrears are \$1,710.00.

The tenant testified that he had not paid rent for September 2011 because the landlord waived rent for that month as compensation for dealing with a bedbug infestation. The landlord testified that this never occurred and the tenant has failed to pay rent for September 2011. No documentary evidence was provided by either party regarding an agreement by the landlord to waive rent for September 2011. The tenant does not dispute any other rent amounts owed.

The tenant also testified that despite his attempts on July 28, 2012 to provide the landlord a cheque to pay the outstanding rent the landlord refused to accept the cheque. The tenant testified that due to restrictions on his bank account he cannot take out more than \$100.00 every five days and the only method he could use was to write a cheque cover the rent owed.

The landlord provided copies of three cheques signed by the tenant that had been returned as insufficient funds: August 2011; June 15, 2012; and July 15, 2012.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk; or
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely

affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

Section 47(4) goes on to say that within 10 days of receiving such a notice the tenant may dispute the notice by making an application for dispute resolution.

And Section 47(5) states that if a tenant who receives a notice under Section 47 does not file an application for dispute resolution within 10 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

In the case before, I find the tenant did not dispute the 1 Month Notice to End Tenancy for Cause that the landlord issued in accordance with Section 47. I find, therefore, pursuant to Section 47(5) the tenant is conclusively presumed to have accepted the end of the tenancy.

As I have found the tenant is conclusively presumed to have accepted the end of the tenancy based on the 1 Month Notice to End Tenancy for Cause, I find it unnecessary to make any findings related to an order of possession for the 10 Day Notice to End Tenancy for Unpaid Rent.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes. As such, the burden rests with the party making the claim that such an agreement was made, to provide sufficient corroborating evidence to establish its existence.

As to the landlord's claim for unpaid rent, despite the tenant's testimony that the landlord had waived rent for September 2011 and in light of the landlord's testimony that no such agreement was reached, I find the tenant has failed to provide any evidence to corroborate the parties had an agreement to waive payment of September 2011.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,760.00** comprised of \$1,710.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: August 31, 2012.

Residential Tenancy Branch