



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application filed July 13, 2012: MT; CNC

Landlord's application filed July 17, 2012: OPR; MNR; MNSD; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to be allowed more time to make his application to cancel a Notice to End Tenancy for Cause (the "Notice"); and to cancel the Notice.

The Landlord seeks an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; to retain the security deposit in partial satisfaction of the Landlord's monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing and were provided the opportunity to be heard, present evidence and to make submissions.

The Tenant testified that he handed his Notice of Hearing documents to the Landlord but he could not recall the date. The Landlord acknowledged receiving the Tenant's Notice of Hearing documents on or about July 16, 2012.

The Landlord testified that he handed his Notice of Hearing documents and copies of his documentary evidence to the Tenant on July 17, 2012.

Preliminary Matters

Section 46(4) of the Act provides that a tenant may dispute a notice to end tenancy within 5 days of receiving the notice. In this case the Tenant filed his Application for Dispute Resolution 7 days after receiving the Notice.

Section 66(1) of the Act provides that the 5 day time limit may be extended only in exceptional circumstances unless the Landlord agrees to the extension or the Tenant has deducted the unpaid amount because he believed the deduction was allowed for emergency repairs or under an Order of the Director.

The Tenant was very confused about what he had applied for. He testified that he thought he had filed within the allowable time frame because the Residential Tenancy Branch accepted his Application. He stated that he did not know that he only had 5

days to dispute the Notice. He stated that he was told he could file it and pick up the documents "on Monday".

The Landlord did not agree to the extension.

In his Application for Dispute Resolution, "Details of Dispute" section, the Tenant wrote, "Rent and How much, when I moved in and agreement to waive security deposit for rent. Deposit was to be paid months after in increments."

There are no Orders of the Director that the Tenant can deduct rent, and no emergency repairs have been completed by the Tenant pursuant to the provisions of Section 33 of the Act.

I find that the Tenant provided insufficient reasons that would support a finding of "exceptional circumstances" with respect to his late filing of his Application and therefore I dismiss his application to be allowed more time to dispute the Notice. Therefore, the Tenant's application is dismissed in its entirety.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a monetary award for unpaid rent in the amount of \$525.00?
- Is the Landlord entitled to retain the security deposit in partial satisfaction of his monetary award?

Background and Evidence

A copy of a tenancy agreement signed June 15, 2012, was provided in evidence. A security deposit in the amount of \$250.00 was paid. Monthly rent is \$525.00, due on the first day of each month.

A copy of the Notice was provided in evidence. It alleges unpaid rent in the amount of \$525.00 that was due on July 1, 2012.

The Tenant stated that he tried to pay the Landlord \$500.00 cash on July 24, 2012, but the Landlord would not accept it. He stated that he dealt with someone else when he signed the tenancy agreement and that no walk through was done. The Tenant testified that there were "problems with the rental unit". The Tenant acknowledged that he has not paid rent for August, 2012.

The Landlord asked for an Order of Possession effective two days after service of the Order upon the Tenant.

Analysis

Rent must be paid when it is due whether or not the Landlord complies with the Act unless the Tenant has a right under the Act to deduct all or a portion of the rent. I find that the Tenant had no such right. Section 46 of the Act provides that the Tenant had 5 days after receipt of the Notice to pay the rent. I find that the Landlord had no obligation to accept a partial rent payment 18 days after the Tenant received the Notice.

I find that the Notice is a valid notice to end tenancy. I find that the tenancy ended on July 16, 2012, 10 days after the Tenant received the Notice. Therefore, further to the provisions of Section 55 of the Act, I hereby provide the Landlord an Order of Possession **effective two days after service of the Order upon the Tenant.**

I find that the Landlord has established his claim for unpaid rent in the amount of **\$525.00**. The Landlord has been successful in his application and I find that he is entitled to recover the cost of the filing fee from the Tenant.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit towards partial satisfaction of his monetary award.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Unpaid rent	\$525.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$575.00
Less set off of security deposit	<u>-\$250.00</u>
BALANCE DUE TO THE LANDLORD	\$325.00

Conclusion

The Tenant's application is **dismissed**.

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant.** This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord Monetary Order in the amount of **\$325.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: August 03, 2012.

Residential Tenancy Branch