



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities; a monetary Order for unpaid rent or utilities; to retain all or part of the security deposit; and to recover the filing fee for the Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the filing fee for the Application for Dispute Resolution.

The Application for Dispute Resolution indicates that the Landlord has not provided the Tenant with a copy of the tenancy agreement and that the Landlord has broken "several of the RTA accords". As the Tenant does not disclose how the Landlord has failed to comply with the *Act*, other than the alleged failure to provide a copy of the tenancy agreement, no other alleged contraventions will be considered at this hearing.

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 documents to the Residential Tenancy Branch which the Landlord intended to reply upon as evidence. The Landlord stated that these documents were mailed to the Tenant, with the Application for Dispute Resolution, Notice of Hearing, and Monetary Order Worksheet on October 19, 2012. The male Tenant acknowledged receiving the Application for Dispute Resolution, the Notice of Hearing, and the Monetary Order Worksheet, but denies receiving the other documents. As the Tenant does not acknowledge receipt of the other documents they were not accepted as evidence for these proceedings. The Landlord declined the opportunity to request an adjournment for the purposes of re-serving the other documents.

The male Tenant stated that the Tenant's Application for Dispute Resolution and Notice of Hearing were sent to the Landlord, via registered mail, on October 19, 2012. He

stated that they were sent to the address for the Landlord on the Notice to End Tenancy and that the documents were returned by Canada Post as the address was incorrect. The Landlord agrees that an incorrect address was listed on the Notice to End Tenancy. The Landlord declined the opportunity to request an adjournment for the purposes of receiving the Tenant's Application for Dispute Resolution and he stated that he is prepared to respond to the Tenant's claims at this hearing.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent or should the Notice to End Tenancy be set aside; is the Landlord entitled to a monetary Order for unpaid rent and or utilities; whether the Landlord is entitled to keep all or part of the security deposit; is there a need for an Order requiring the Landlord to comply with the *Act*; and is either party entitled to recover the fee for the filing their Application for Dispute Resolution, pursuant to sections 38, 46(4), 55, 62(3), 67, and 72 of the *Residential Tenancy Act (Act)*?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 01, 2011; that the tenancy agreement required the Tenant to pay monthly rent of \$775.00 by the first day of each month; and that the Tenant has only paid \$200.00 in rent for the period between August 01, 2012 and November 22, 2012. The Landlord stated that a security deposit of \$390.00 was paid sometime in 2011. The Tenant cannot recall how much of a security deposit was paid but he believes it would have been one-half of the monthly rent.

The Landlord stated that an agent for the Landlord personally served a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of October 22, 2012, to the Tenant on October 12, 2012. He based this testimony on a Proof of Service that he has in his possession, which was signed by the agent for the Landlord who allegedly served the Notice.

The male Tenant stated that he was not personally served the Ten Day Notice to End Tenancy and that he located it on the floor of the rental unit on October 13, 2012 or October 14, 2012.

The Landlord is seeking compensation, in the amount of \$187.95. The Landlord did not attempt to serve any documentary evidence to support this claim. The male Tenant stated that he pays the utilities to the municipality and that he does not currently owe any money for utilities to the Landlord.

The male Tenant stated that the Tenant has never received a copy of the tenancy agreement and he has applied for an Order requiring the Landlord to provide a copy of the agreement. The Landlord stated that a copy was provided on October 05, 2011 but he is willing to provide a second copy.

Analysis

On the basis of the undisputed evidence, I find that the Tenant has only paid \$200.00 of the \$2,325.00 in rent the Tenant was obligated to pay for the period between August 01, 2012 and October 30, 2012. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,125.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Given that the Tenant denies being personally served with the Notice to End Tenancy, I find that the Landlord submitted insufficient evidence to clearly establish that the Tenant was personally served with the Notice to End Tenancy on October 12, 2012. As the Tenant acknowledged receiving the Notice to End Tenancy on October 13, 2012 or October 14, 2012, however, I find that the Notice to End tenancy was served to the Tenant on October 14, 2012, pursuant to section 71(2)(b) of the *Act*.

As the Tenant did not pay rent when it was due and the Tenant has been served a Notice to End Tenancy, I find that the Landlord had grounds to end this tenancy, pursuant to section 46 of the *Act*. I therefore dismiss the Tenant's application to set aside the Notice to End Tenancy and I grant the Landlord an Order of Possession.

As the Tenant did not vacate the rental unit ten days after the Tenant received the Notice to End Tenancy, which was October 24, 2012, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between October 24, 2012 and October 31, 2012, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the 22 days in November that the Tenant remained in possession of the rental unit, at a daily rate of \$25.83, which equates to \$568.26.

I find that the Tenant fundamentally breached the tenancy agreement when the Tenant did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when the Tenant did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit made it difficult, if not impossible, for the Landlord to find new tenants for the remainder of November of 2012. I therefore find that the Tenant must compensate the Landlord for the loss of revenue the Landlord will likely experience between November 23, 2012 and November 30, 2012, which is \$206.74.

In the absence of documentary evidence, such as a utility bill, I find that the Landlord has failed to establish that the Tenant currently owes the Landlord any money for utilities. I therefore dismiss the Landlord's claim for unpaid utilities.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord did not provide the Tenant with a copy of the tenancy agreement. In reaching this

conclusion I was heavily influenced by the absence of evidence that corroborates the male Tenant's testimony that one was not provided or that refutes the Landlord's testimony that one was provided on October 05, 2011. Although the Tenant has failed to establish that the Landlord did not provide a copy of the tenancy agreement on October 05, 2011, I Order the Landlord to provide the Tenant with a copy of the agreement. I make this Order to ensure that the Tenant is not denied the right to a copy of a legal document.

I find that the Landlord's application has merit and that the Landlord is entitled to recover, from the Tenant, the fee for this Application for Dispute Resolution.

I find that the Tenant has not establish that the Tenant's Application for Dispute Resolution has merit and I dismiss the Tenant's application for recover the fee for filing the Tenant's Application for Dispute Resolution.

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 \$2,950.00, which is comprised of \$2,900.00 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 Tenant to retain the security deposit of \$390.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,560.00. 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: November 22, 2012.

Residential Tenancy Branch