



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, 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.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided the following documents as evidence:

- A copy of a tenancy agreement signed by the parties on October 24, 2012 for a 6 month fixed term tenancy agreement beginning on November 1, 2012 for a monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid;
- A copy of a 1 Month Notice to End Tenancy for Cause issued November 20, 2012 with an effective vacancy date of December 31, 2012 citing the tenant has allowed an unreasonable number of occupants in the unit; 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; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on December 2, 2012 with an effective vacancy date of December 15, 2012 citing the tenant had failed to pay rent in the amount of \$900.00 due December 1, 2012.

The parties agree the landlord provided the tenant with a letter on November 19, 2012 telling the tenant to move out by November 30, 2012. The parties also agree the landlord served the tenant the 1 Month Notice to End Tenancy for Cause on November 20, 2012.

The tenant submits that he did not file an Application for Dispute Resolution seeking to cancel the 1 Month Notice. The parties also agree the landlord issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent on December 2, 2012. The tenant acknowledges that he did not dispute this notice either.

The landlord testified the tenant has not paid any rent for the month of December 2012. The tenant testified that he paid the landlord rent on December 1, 2012 but that the landlord did not give him a receipt.

The landlord had submitted into evidence copies of text messaging between himself and the tenant in regards to the payment of rent in which the landlord reminds the tenant he must pay rent and that he issued the tenant a 10 Day Notice for Unpaid Rent for December 2012 rent.

While the tenant responds to the landlord's text messages he does not, in any response, state that he paid the rent. Rather he continuously asks the landlords for an arbitration date and that the landlord owes him money.

The tenant testified that he stated the landlord owes him money because he had paid the rent but the landlord had issued him a notice to end the tenancy and so he shouldn't have to pay rent for December 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) There are an unreasonable number of occupants in a rental unit;
- b) 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;
- c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. 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.

I have reviewed all documentary evidence and testimony and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice was received by the tenant on November 20, 2012 and the effective date of the notice is December 31, 2012. I accept the evidence before me that the tenant failed to dispute the notice within the 10 days granted under Section 47(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Based on the testimony and evidence before me I find it unlikely that the tenant, who had received a 1 Month Notice to End Tenancy on November 20, 2012 would have paid the landlord his rent on December 1, 2012 and then stated in a text the next day that the landlord owed him the rent that he had just paid because he believed he was entitled to it for the notice that had been issued.

In addition, I find it unlikely that when the tenant received the 10 Day Notice to End Tenancy for Unpaid Rent that he would not file an Application to dispute that notice if he had truly paid the rent.

Therefore, I find the landlord's testimony and evidence to be more credible in relation to the non-payment of rent and find the tenant did not pay rent for December 2012.

While the landlord did provide a copy of the 10 Day Notice and the tenant acknowledged that he did not dispute the 10 Day Notice I am unable to provide the landlord with an order of possession based on the 10 Day Notice because he only applied for the order of possession based on the 1 Month Notice to End Tenancy for Cause.

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 in the amount of **\$950.00** comprised of \$900.00rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$450.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$500.00**.

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: December 21, 2012.

Residential Tenancy Branch