



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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; his witness; the tenant; an occupant; the tenant's advocate; and his observer.

This hearing was originally convened on January 24, 2013 to be heard in conjunction with the tenant's Application for Dispute Resolution to cancel two notices to end tenancy. The landlord had issued 3 Notices to End Tenancy: two on December 19, 2012 and one on January 9, 2013.

The tenant had applied to cancel the two notices issued on December 19, 2012 and the landlord's Application dealt with the notice he issued on January 9, 2013. Due to a service issue and the fact that the Applications of each party dealt with different notices to end the tenancy I adjudicated the tenant's Application and adjourned the landlord's Application, to ensure service of the landlord's Application to the tenant was effected.

The service issue was that the tenant testified that she had not received notification from Canada Post until the day of the original hearing (January 24, 2013) that she had any registered mail. With permission of the tenant and the tenant's advocate I had reviewed, during the first hearing, the tracking information online; the tenant's advocate also reviewed the online information during that hearing.

The tracking information indicated Canada Post had provided the tenant with notice of the package on January 16, 2013 and a final notice on January 21, 2013. The tenant testified, in the original hearing, she did not receive a notice until January 24, 2013 and had not had an opportunity to pick it up yet.

The tenant's advocate testified that the package the landlord had sent by registered mail did not include a copy of the Notice to End Tenancy and he contacted the landlord to have a copy provided to him. The landlord testified he provided a copy to the advocate and that he served the tenant with this additional evidence by placing it in her mail box on February 12, 2013. The landlord's witness testified that she witnessed the

landlord place an envelope in the tenant's mailbox on February 12, 2013 but she was not aware of the contents.

The tenant testified that she never received this additional evidence and that she had not seen the Notice to End Tenancy until she arrived to her advocate's office for this hearing.

The landlord advised, at the outset of the hearing, that he had a witness and that she would wait outside of the room until called to provide testimony. This was a witness the landlord had wanted to provide testimony at the last hearing but because she had been in the room with the landlord when he provided his testimony I would not allow her testimony at that hearing.

The tenant's advocate pointed out, prior to calling the landlord's witness in this hearing, that I had ruled the landlord's witness could not testify as to service of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued by the landlord on January 9, 2013 because that was the specific testimony I disallowed in the January 24, 2013 hearing. I ordered the landlord's witness could only provide testimony related to the service of documents to the tenant after the original hearing.

During the hearing I allowed both parties to fax me additional evidence that each of the parties confirmed that they had received from the other party. From the landlord, I accepted a copy of a receipt issued by the landlord for the cash payment of \$525.00 rent dated December 18, 2012.

From the tenant, I accepted copies of two "Shelter Information" documents used by the Ministry of Social Development (MSD) signed by the landlord on November 24, 2012. One document was for the tenant and one for the occupant. In addition, I had the tenant's advocate fax me a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities Proof of Service document during the hearing.

I requested this document specifically during the hearing because the tenant's advocate testified that he believed the landlord had completed this document after the last hearing. I found upon review of the document the advocate had faxed and the document that the landlord had provided to the Residential Tenancy Branch (RTB) on January 15, 2013 (prior to the original hearing) to be the same document.

I confirmed that the only difference between the two documents is that in the document received by the tenant's advocate and the document received by the RTB was that the tenant's advocate's copy was not dated and the one in the RTB file was dated January 15, 2013. While the advocate raised concern that the document had been altered, I find the date that was included was only the date the document was completed and that the alteration is immaterial to the matters before me.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; 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, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on November 14, 2012 for a month to month tenancy beginning on December 1, 2012 for the monthly rent of \$1,400.00 due on the 1st of each month and a security deposit of \$700.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 9, 2012 with an effective vacancy date of January 19, 2013 due to \$830.00 in unpaid rent and \$103.26 for utilities following a written demand from the landlord on January 9, 2013.

The landlord submits the tenant failed to pay the full rent owed for the months of December 2012 and January 2013 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by leaving it personally with the tenant on January 9, 2013 at 11:45 p.m. and that this service was witnessed by a third party.

The landlord testified the tenant only paid rent in the amount of \$525.00 on December 18, 2012 and promised that she would receive additional monies from the MSD to pay the balance of rent for December 2012. The landlord provided a copy of a receipt issued December 18, 2012 in the amount of \$525.00. The tenant submits that the tenant provided the landlord with two cash payments totalling \$700.00. The tenant did not dispute receiving the receipt dated December 18, 2012.

The tenant submits that the tenancy agreement she originally signed was a handwritten agreement and that the start date of the tenancy was actually December 15, 2012 and that this is confirmed by the MSD Shelter Information documents that indicate the tenancy began on December 15, 2012.

The landlord pointed out that the Shelter Information documents state: "This form is for Ministry of Social Development information only and does NOT constitute a tenancy agreement under the *Residential Tenancy Act*." The landlord also submits that he thought he was helping the tenant out by stating the start date was December 15, 2012 on this form.

The tenant testified further that the landlord returned with a typewritten tenancy agreement which she signed without checking to see if he had altered any of the terms of the tenancy agreement, including the start date.

The landlord submits that he is still owed \$875.00 for rent for December 2012. The tenant submits that she had paid all rent owed to the landlord for the rental beginning on December 15, 2012 and that she did not move in to the rental unit until that time.

The tenant submits that she paid the landlord her portion of the January rent in two installments: December 27, 2012 she paid the landlord \$660.00 and on January 4, 2013 she paid \$110.00 and the occupant paid \$570.00 on January 2, 2013 and \$80.00 on January 5, 2013. The tenant submits that all payments, with the exception of the January 2, 2013 payment were by cash and that the landlord did not issue receipts for any of the cash payments. The January 2, 2013 payment was made by cheque issued by the MSD.

The landlord submits that he did not receive any payments from the MSD or the tenant other than the January 2, 2013 payment and on January 9, 2013 he received a call from a worker at the MSD who advised him that the tenant had already received all her rent amounts from them for December 2012 and January 2013. The landlord testified as a result he issued the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities.

The landlord testified that he served the tenant in person and that she took the notice, tore it up, and threw it away. The landlord submitted in his documentary evidence a declaration to this effect and it notes that the service was witnessed by a third party. The tenant testified she never received any such notice from the landlord and that she did not receive a notice in this way then tear it up and discard it.

The parties agree the landlord has received the full payment of rent (\$1,400.00) by cheque from the MSD for the month of February 2013 and that the tenants have provided the landlord with a money order totalling \$263.00.

The tenants submit the landlord did not issue a receipt for the February rent payment identifying that he received the payment for use and occupancy only and that the money order was intended for utilities in the amount of \$103.00 and the balance of rent of \$160.00 because they believed that their MSD workers would not be sending the landlord the full amount of rent.

Analysis

In regard to the start date of the tenancy, I find, based on the tenant's testimony, the tenant signed the tenancy agreement acknowledging the tenancy began on December 1, 2013 and as such the obligations under the tenancy agreement began once the agreement was signed.

In the absence of any other written agreements between the parties I find that the tenant was responsible for the payment of rent for the entire month of December 2012.

While it is unclear why the landlord felt he was helping the tenant by stating the tenancy began on December 15, 2012 on the MSD forms I accept his argument that the MSD document does not constitute the tenancy agreement between the tenant and the landlord and that the parties are bound by the tenancy agreement and not the MSD documents.

I have reviewed all the relevant documentary evidence and testimony. When I consider the tenant's submissions in their totality I find the testimony of the tenant to not be credible for the following reasons:

- The tenant provided no plausible explanation as to why she made any of her rental payments (December or January) in installments when she receives her shelter supplements from MSD after she provides them with her shelter information;
- I find that the landlord has established that he provided a rent receipt for the payment of partial rent in December, 2012 and as such I find it unlikely that he would not issue additional receipts for any other cash payments;
- The tenant testified that she had not received any notifications from Canada Post regarding the registered mail sent by the landlord on January 15, 2013 until January 24, 2013 despite the tracking information reviewed during the hearing clearly indicating Canada Post left a first notice on January 16, 2013 and a final notice on January 21, 2013;
- I accept the landlord's witness statement that the landlord served the tenant with documents for this hearing on February 12, 2013 as corroborating the landlord's testimony.

For these reasons I find that the tenant has been served with notice to end tenancy as declared by the landlord. The notice was received by the tenant on January 9, 2013 in person and the effective date of the notice was January 19, 2013. I find, based on the landlord's testimony that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I also find that the landlord has established the tenant has failed to pay rent in the amount of \$875.00 for December 2012 and \$830 for the month of January 2013. I also accept, based on the testimony of both parties that the landlord received a money order from the tenants that in part includes \$160.00 towards rent and I deduct this amount from the outstanding arrears. As such, I find the tenant owes a total of \$1,545.00 in rental arrears.

In relation to the landlord's claims for utilities I find the landlord has failed to provide the tenants with a written demand for any utility charges and as such I find the landlord's Application is premature on these issues.

I dismiss this portion of the landlord's claim with leave to reapply at a future date however I acknowledge and record that the tenant has provided the landlord with a money order that, in part, covers utility costs in the amount of \$103.00.

As to the tenant's advocate's issue that the landlord did not provide the tenant with a receipt that stipulates for use and occupancy only when he received the tenant's rental payment for February 2013, I find that landlord clearly identified his intent that he did not wish to reinstate the tenancy by continuing to pursue his Application for Dispute Resolution, including the service of relevant evidence and material to both the tenant and the tenant's advocate.

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 grant a monetary order in the amount of **\$1,595.00** comprised of \$1,545.00 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: February 22, 2013

Residential Tenancy Branch