



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTSEA CONSTRUCTION LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlord be issued an Order of Possession?
2. Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a 10 Day Notice issued January 9, 2013; a tenant payment ledger; the tenancy agreement; application for tenancy; and a note written by the Tenant in July 2012.

The parties confirmed they entered into a fixed term tenancy agreement that began on June 20, 2012 and switched to a month to month tenancy after November 30, 2012. Rent was payable on the first of each month in the amount of \$602.00 and on June 19, 2012 the Tenant paid the Landlord \$301.00 as the security deposit.

The Landlord stated that when the Tenant failed to pay the December 2012 and January 2013 rent in full they posted a 10 Day Notice to end tenancy to his door on January 9, 2012.

The Tenant acknowledged receipt of the 10 Day Notice and stated that he had made a verbal agreement with one of the girls in the office to allow him until January 25, 2013 to pay his rent. Then a few days later he received the Notice of arbitration hearing in the mail so he decided to vacate the property. He said that he vacated the unit by January 24, 2012 and left the keys in the main floor office drop box.

The Landlord confirmed that there is office staff in that office daily. He stated that they have not received or seen the Tenant's keys. They have not posted any notices of entry and have not checked on his unit to see if he had moved out. They advised that they posted a letter of arrears to the Tenant's door on February 6, 2013 and that notice was still on the door when they checked yesterday.

The Landlord advised that they had no recollection of an agreement being made with this Tenant; rather they had instructed the staff to accept the payment but to advise the Tenant that they would not be reinstating the tenancy. They planned on proceeding to end the tenancy with the January 2013, 10 Day Notice.

In closing the Tenant confirmed he owed the Landlord past rent and he would be paying them once he receives his pay cheque. The Landlord wished to proceed with getting an Order of Possession and a Monetary Order as filed.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends and they must vacate the unit.

In this case the Tenant is deemed to have received the 10 Day Notice on January 12, 2013, three days after it was posted to the door, and the effective date of the Notice is January 22, 2013. The Tenant neither paid the rent nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **January 22, 2013**. The Tenant advised that he vacated the unit on January 24, 2013 in accordance with the Notice. Based on the foregoing, I find the Landlord has regained possession of the rental and an Order of Possession is not required to be issued in this case.

The Landlord claimed unpaid rent of \$1,209.00 that consists of \$607.00 that was due December 1, 2012 plus \$602.00 that was due for January 1, 2013 rent, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. The Tenant acknowledged owing the Landlord the outstanding

rent. Based on the aforementioned, I award the Landlord unpaid rent in the amount of **\$1,209.00**.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*. The Tenant is required to provide the Landlord with his forwarding, in writing, to ensure the security deposit is managed accordingly.

Conclusion

The Landlord has been awarded a Monetary Order for **\$1,259.00** (\$1,209.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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: February 19, 2013

Residential Tenancy Branch

