



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, O and FF
Tenant: CNR, OLC, LRE and FF

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of January 14, 2013, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent dated January 11, 2013 and a one month notice given by the tenant on January 8, 2013. The landlord also sought a monetary award for the unpaid rent and recovery of the filing fee for this proceeding. In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to amend the application to include a request to retain the security deposit in set off against the balance owed.

By application of January 10, 2013, the tenant had sought to have the Notice to End Tenancy of January 11, 2013 set aside. The tenant also sought a orders for the landlord to comply with the legislation and rental agreement, limiting the landlord's access to the rental unit and permitting the tenant to change the lock.

As a matter of note, for the first month of this tenancy, from December 7, 2012 to January 7, 2013, the tenant resided in the upper portion of the rental building, and shared kitchen and bath with the landlord. Section 4 of the *Act* sets out types of tenancies that are not covered by the Act and includes at subsection (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner.

Accordingly, I must find that the *Act* did apply to this living accommodation until January 8, 2012 when the tenant moved in to the subject room downstairs. The move was delayed when the tenant at the time became ill and could not move out on January 1, 2013 as planned.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside or upheld? Are the orders requested by the tenant warranted under the circumstances? Is the landlord entitled to a monetary award and in what amount?

Background and Evidence

The portion of this tenancy over which the Act has jurisdiction began on January 8, 2013. Rent was \$500 per month and the landlord holds a security deposit of \$250 although the parties disagree on when it was paid. The parties concur that the tenant paid \$400, the tenant stating it was paid on December 12, 2012 or and the landlord stating it was paid on December 28, 2012.

The tenant claims to have paid \$750 on December 10, 2012, but the proof submitted simply states that a \$250 deposit was paid and that rent will be \$500 per month, not that the rent was paid. Furthermore, the landlord's son stated that his elderly mother had writing the document in advance, anticipating that the deposit would be paid and left it in the rental unit. He stated that the tenant had taken the document and would not return it. I prefer the evidence of the landlord on this question.

In any event, by his own accounting, the tenant stated that he had paid \$150 toward the January 2012 rent while the landlord stated he had paid nothing. At a per diem of \$16.13, the rent for 24 days of January 2013 would have been \$387.12 ($\$500/31 \times 24$). Therefore, I find that the rent for January 2013 was deficient by \$387.12 or by that amount less \$150. In either case, the rent was not paid in full within five days of service of the Notice to End Tenancy. As I do not have jurisdiction over the first portion of the tenancy, I make no finding on the tenant's claim that December 2012 was to be free vs the landlord's claim that the tenant had negotiated a reduction to \$450 for the upper unit.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due.

The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did make timely application to dispute the notice but he did not pay the rent within five days of receiving it.

Therefore, I find that the Notice to End Tenancy of January 11, 2013 was lawful and valid and that I could not set it aside.

On hearing that determination, the landlord requested and I find she is entitled to an Order of Possession under section 55(1) of the Act which compels issuance of the order on the landlord's oral request when a tenant's application to dispute a notice to end is dismissed and the notice is upheld.

As requested by the landlord, the Order of Possession is to take effect two days from service of it on the tenant.

As the end of the tenancy is imminent, I find that the tenant's request for an order permitting him to change the lock, limit landlord access, and order landlord compliance are moot. They are dismissed.

As to the monetary award, but the tenant's accounting, he owes \$387.12 - \$150 = \$237.12 of the January 2013 rent. In addition, I find that the landlord is entitled to recovery the filing fee for this proceeding from the tenant and, I hereby authorize the landlord to retain the security deposit in set off against the balance owed.

Thus, I make a monetary award calculated as follows:

Rent shortfall for January 2013 as agreed by parties	\$237.12
Filing fee	50.00
Total	\$287.12
Less retain security deposit	- 250.00
TOTAL	\$ 37.12

The landlord remains at liberty to make application for loss of rent for February 2013 when the extent of that loss is known.

Conclusion

The tenant's application is dismissed without leave to reapply and the Notice to End Tenancy is upheld.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

In addition to authorization to retain the tenant's security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$37.12 for service on the tenant.

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 04, 2013

Residential Tenancy Branch

