



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

In September 2012 the Landlord entered into an agreement with a 3rd party to facilitate the rent/purchase of their home. The 3rd party would look for a tenant/purchaser to rent/purchase the house with a down payment of \$3,500.00 and monthly rent, part of

which would be also set against the purchase price of the house. In early October 2012 the 3rd party informed the Landlord that a person (the "Tenant") was interested but could only provide a partial down payment. The Landlord states that they instructed the 3rd party to seek a greater down payment. On November 1, 2012 the Landlord was informed that the property sold and was asked to provide their banking information so that the 3rd party could transfer the partial down payment to the Landlord. The Landlord sent their banking information but did not receive any monies or hear anything back from the 3rd party.

On November 7, 2012 the Landlord discovered that the Tenant had moved into the house. The Tenant informed the Landlord that \$1,500.00 had been provided to the 3rd party as rent for November 2012. The Landlord informed the Tenant that they could not agree to the terms that the Tenant said had been agreed to with the 3rd party. The Landlord informed the Tenant that with the provision of proof of income and references they would rent the house to her starting December 1, 2012 at a rental rate of \$1,300.00 until a purchaser was found. The Tenant was also told that if the Tenant were able to qualify for a mortgage, they would rent the unit to her at the same price but with \$100.00 of the rent being set against the purchase price.

On December 1, 2012, no monies were received from the Tenant who informed the Landlord that payment of the monies would be late. On December 10, 2012, the Landlord unsuccessfully attempted to remove the Tenant from the house. On December 20, 2012 the Landlord informed the Tenant that the 3rd party had been dismissed and that all rents payable would now be payable to the Landlord. No monies have been received by the Landlord either from the 3rd party or the Tenant.

On January 2, 2013 the Landlord served the Tenant with a 10 day notice for unpaid rent of \$2,600.00 by registered mail. The Tenant has not paid the rent, has not filed an application to dispute the Notice and has not moved out of the unit.

Analysis

Section 2 of the Act provides that the Act applies to tenancy agreements. A "tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. As set out in the policy guidelines, if the relationship between the parties is that of seller and purchaser of real estate, the Act would not apply as the parties have not entered into a "tenancy Agreement" as defined in section 1 of the Act. Although there is an agreement between the Landlord and the 3rd party that appears to be a rent/purchase agreement, I find that this agreement is so vague and plagued with omissions, such as consideration and privity of contract, that the agreement is unenforceable. At most, the agreement offers a licence to occupy terminable at will.

Given this finding, noting that there is no evidence to support that the Tenant paid any monies towards a purchase price, and based on the undisputed evidence that the Tenant paid rent for November 2012 and was offered the opportunity to pay a reduced rent from December 2012 onwards, I find that a tenancy existed. As such, I find that the Act does apply to the relationship between the Parties.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's undisputed evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not filed an application to dispute the notice and has not paid the outstanding rent. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for unpaid rent for December 2012 and January and February 2013 in the amount of **\$3,900.00**.

The Landlord is also entitled to recovery of the **\$50.00** filing fee for a total monetary amount of **\$3,950.00**.

Conclusion

I **grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I **grant** the Landlord a monetary order under Section 67 of the Act for **\$3,950.00**. If necessary, this order may be filed in the 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 25, 2013

Residential Tenancy Branch

