



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Real Estates Services Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The male Agent for the Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and some documents the Landlord wished to rely upon as evidence was sent to the Tenant, via registered mail, on February 26, 2013. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were mailed to the Tenant on March 07, 2013. Canada Post documentation was submitted that corroborates this statement. The Tenant stated that he did not receive these documents until March 15, 2013 and he argues that they were not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure.

Section 90 of the *Residential Tenancy Act (Act)* stipulates that a document that is served by mail is deemed to be received on the fifth day after it is mailed. I therefore find that it was reasonable for the Landlord to conclude that evidence mailed on March 07, 2013 would be received by the Tenant by March 12, 2013. Had the Tenant received the documents by March 12, 2013, the documents would have been served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure.

While I have no reason to discount the Tenant's testimony that he did not receive the documents until March 15, 2013, the delay in delivery was not the fault of the Landlord and I find it would be unfair to the Landlord to exclude this evidence or, given that this is an application for an Order of Possession, to adjourn this matter. As the Tenant has had a full three days to consider the documents, most of which he has seen prior to being served with them for these proceedings, I accept these documents as evidence as I do not find it unduly prejudices the Tenant.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep 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, 55, 67, and 72 of the Act?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2012; that the Tenant is required to pay monthly rent of \$720.00 by the first day of each month; that the Tenant paid a security deposit of \$360.00; and that the Tenant did not pay the rent that when it was due on February 01, 2013.

The male Agent for the Landlord stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of February 24, 2013, on the door of the rental unit on February 14, 2013. The Notice declared that the Tenant failed to pay \$745.00 in rent that was due on February 01, 2013. The male Agent for the Landlord stated that \$25.00 of this amount was for an NSF fee, rather than overdue rent.

The Tenant acknowledged receiving the Ten Day Notice to End Tenancy for Unpaid Rent on February 14, 2013.

The Landlord and the Tenant agree that on February 19, 2013 the Tenant placed the following three cheques in the Landlord's drop box:

- Cheque #079, made payable to Randal North, in the amount of \$220.00. The date of the cheque is not clear, although it appears the writer has attempted to correct the month on the cheque, perhaps to show the second month of the year.
- Cheque #078, made payable to RN 'Management' Randal North, in the amount of \$110.00, dated February 19, 2013.
- Cheque #076, made payable to R.N Property 'Management', in the amount of \$200.00, dated February 19, 2013.

The male Agent for the Landlord stated that when he attempted to deposit these cheques the Landlord's financial institution advised him that cheque #079 could not be cashed as the date on the cheque was unclear; that cheque #078 could not be cashed because the cheque did not properly identify the Landlord; and that cheque #076 could not be cashed because the cheque did not properly identify the Landlord.

The Landlord and the Tenant agree that on February 19, 2013 the Tenant placed a fourth cheque in the Landlord's drop box, in the amount of \$190.00, which has been cashed by the Landlord.

The male Agent for the Landlord stated that the Tenant was not advised there was a problem with any of the cheques tendered on February 19, 2013 until March 05, 2013.

The Landlord and the Tenant agree that the Tenant had previously provided the Landlord with a post dated cheque, in the amount of \$720.00, for rent for March. The parties agree that the Landlord advised the Tenant that he did not want to cash this cheque due to concerns that it would not be honored by the Tenant's financial institution, and that the Landlord directed the Tenant to pay his rent by cash or money order.

The Landlord and the Tenant agree that the Tenant subsequently provided the Landlord with a money order, in the amount of \$1,150.00. The Tenant stated this was provided on March 06, 2013 and the male Agent for the Landlord stated it was provided on March 07, 2013.

Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$720.00 by the first day of each month; that the Tenant did not pay the rent when it was due on February 01, 2013; and that a Notice to End Tenancy for Unpaid Rent was received by the Tenant on February 14, 2013.

Section 46(4) of the *Act* stipulates that a Notice to End Tenancy for Unpaid Rent has no effect if the tenant pays the overdue rent within five days after receiving the Notice. I find that the Tenant paid his rent on February 14, 2013 when he placed four cheques, which totaled \$720.00, in the Landlord's mail box. I therefore find that the Notice to End Tenancy that was posted on the door on February 01, 2013 has no effect. I therefore dismiss the Landlord's application for an Order of Possession.

In determining that the four cheques served as payment, I was influenced by the fact that one of those cheques, in the amount of \$190.00, was cashed by the Landlord.

I was further influenced by the lack of documentary evidence that shows cheque #076 and #078 were not accepted as legal tender by the Landlord's financial institution or that

they would not have been honored by the Tenant's financial institution. Although the name on these cheques is not entirely accurate, I find it entirely possible that the Tenant's financial institution may have processed the cheques. In my view, the Landlord had an obligation to either process the cheques or to provide documentary evidence to show it was unable to process the cheques.

I was further influenced by the lack of documentary evidence that shows cheque #079 was not accepted as legal tender by the Landlord's financial institution or that it would not have been honored by the Tenant's financial institution. Although the date on the cheque is not clear, I find it possible that a financial institution may have processed the cheque. In my view, the Landlord had an obligation to either process the cheque or to provide documentary evidence to show it was unable to process the cheque.

On the basis of the undisputed evidence, I find that the Tenant provided the Landlord with a money order, in the amount of \$1,150.00, in March of 2013. I find that \$530.00 of the \$1,150.00 payment should be applied to outstanding rent from February of 2013 and the remaining \$620.00 should be applied to outstanding rent from March of 2013. I therefore find that the Tenant still owes \$100.00 in rent for March.

I am not satisfied that this matter could not have been resolved without the need for a dispute resolution proceeding if the Landlord had made a diligent effort to process the cheques that were received on February 19, 2013 or, at least, to inform the Tenant of the Landlord's concern regarding the cheques. I therefore dismiss the Landlord's application to recover the fee for filing this Application for Dispute Resolution.

I have made no decision regarding whether money is owed for NSF or internet fees, as the Landlord has not claimed compensation for these fees. These proceedings were limited to money owed for rent.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$100.00, for unpaid rent. Based on these determinations I grant the Landlord a monetary Order for the amount of \$100.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court. In the event this debt is not paid by the end of this tenancy, the Landlord has the right to retain this amount from the security deposit, pursuant to section 38(3) of the *Act*.

In an attempt to provide some stability to this tenancy, I order the Tenant to make any cheques he provides to the Landlord payable to Randall North Real Estate Services Inc.

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: March 21, 2013

Residential Tenancy Branch