



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nai Goddard & Smith Realty Services Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF, O

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, to recover the fee for filing an Application for Dispute Resolution; and for “other”.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy and for a monetary Order for money owed or compensation for damage or loss. The Tenant amended his original Application for Dispute Resolution to include an application to set aside a second Notice to End Tenancy that he received in March of 2013.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant included a claim for compensation for the loss of the quiet enjoyment of his rental unit. I find that this claim is not sufficiently related to the claim to set aside the Notices to End Tenancy and that the second matter should not be determined during these proceedings. I will, therefore, only consider the Tenant’s application to set aside the Notices to End Tenancy. The Tenant’s application for a monetary Order is dismissed, with leave to re-apply.

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 Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord’s evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served

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Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession; should a Notice to End Tenancy be set aside; is the Landlord entitled to a monetary Order for unpaid rent/lost revenue; is the Landlord entitled to keep all or part of the security deposit; and is the Landlord entitled to recover the fee for filing the Application for Dispute Resolution, pursuant to sections 38, 46(4), 55, 67, and 72(1) of the *Residential Tenancy Act (Act)*?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 01, 2012; that the Tenant is required to pay monthly rent of \$1,100.00 by the first day of each month; that the Tenant paid a security deposit of \$550.00; and that the Tenant has paid no rent for February or March of 2013.

The Landlord and the Tenant agree that they entered into a verbal agreement which required the Tenant to pay rent of \$550.00 for February if he vacated the rental unit by February 15, 2013, and that the Tenant has not yet vacated the rental unit. The Tenant stated that he did not pay rent because the occupant living below him was disturbing him to the point he needed to vacate the rental unit. The Tenant stated that he was unable to vacate the rental unit in February for medical reasons.

The 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 28, 2013, on the door of the rental unit on February 18, 2013. The Tenant acknowledged receiving this Notice on February 18, 2013.

The 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 March 16, 2013, on the door of the rental unit on March 04, 2013. The Tenant acknowledged receiving this Notice on March 04, 2013.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required him to pay monthly rent of \$1,100.00 by the first day of each month; that the Tenant and the Agent for the Landlord verbally agreed that the Tenant would only have to pay \$550.00 in rent if he vacated the rental unit by February 15, 2013; and that the Tenant has not yet vacated the rental unit.

Section 26 of the *Act* requires a tenant to pay rent when it is due whether or not the landlord complies with the *Act*. A tenant is not entitled to retain any portion of the rent

because he/she believes his/her right to quiet enjoyment has been breached, without prior authorization from the Residential Tenancy Branch.

As the Tenant did not vacate the unit on February 5, 2013 in accordance with his verbal agreement, I find that the Tenant was obligated to pay the full amount of rent that was due on February 01, 2013. As no rent was paid for February, I find that the Tenant owes the Landlord \$1,100.00 in rent for February.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that on February 18, 2013 the Tenant received a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, which directed the Tenant to vacate the rental unit by February 28, 2013.

As rent for February was not paid and the Tenant received proper notice to end the tenancy, I grant the Landlord's application for an Order of Possession and I dismiss the Tenant's application to set aside the Notice to End Tenancy that is dated February 18, 2013.

As this tenancy is ending pursuant to the Notice to End Tenancy that is dated February 18, 2013, I find there is no need to consider the validity of the Notice to End Tenancy that is dated March 04, 2013.

As the Tenant did not vacate the rental unit on February 28, 2013, I find that he is obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. I find that the Tenant must compensate the Landlord for the 21 days in March that he has remained in possession of the rental unit, at a daily rate of \$35.48, which equates to \$745.08.

I find that the Tenant fundamentally breached the tenancy agreement when he did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when he did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that his continued occupancy of the rental unit makes it difficult, if not impossible, for the Landlord to find new tenants for the remainder of March. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it will, or is likely to, experience between March 22, 2013 and March 31, 2013, which is \$354.92.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$2,250.00, which is comprised of \$2,200.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security deposit of \$550.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,700.00. 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.

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

