



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

A hearing into this matter was convened on January 23, 2013, which was attended by the Landlord but not the Tenant. At the conclusion of that hearing an Arbitrator granted the Landlord an Order of Possession and a monetary Order in the amount of \$2,350.00.

On January 31, 2013 the Tenant filed an Application for Review Consideration and on February 07, 2013 an Arbitrator determined that a review hearing should be held.

This review hearing was convened to address the issues raised in the Landlord's Application for Dispute Resolution, which include an application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and an application to recover the fee for filing an Application for Dispute Resolution.

The Landlord attended the review hearing but neither Tenant attended the hearing. The Landlord stated that the Tenant did not serve him with notice of this review hearing or any other documents relating to this review hearing. He stated that he became aware of the review hearing when he was communicating with the Residential Tenancy Branch for the purposes of enforcing his monetary Order.

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; and to recover the fee for filing the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*?

Background and Evidence

The Landlord stated that this tenancy began on October 15, 2012 and that the Tenant was required to pay monthly rent of \$1,300.00 by the first day of each month.

The Landlord stated that the Tenant still owes \$1,020.00 in rent for December of 2012 and that no rent has been paid for January, February, or March of 2013. He stated that he agreed to reduce the rent for December by \$280.00 in exchange for work completed at the rental unit.

In the Application for Review Consideration the Tenant declared that the Landlord owes \$1,055.00 for "tools & fencing & work", and that the Tenant only owes \$245.00 in rent for December and \$1,300.00 in rent for January of 2013.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on December 12, 2012. The Notice indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

In the Application for Review Consideration the Tenant declared that the Tenant did not receive an eviction notice.

The Landlord stated that he served the Application for Dispute Resolution, the Notice of Hearing, and another copy of the Ten Day Notice to End Tenancy, via registered mail, to each Tenant on December 24, 2012. He cited Canada post tracking numbers that corroborate this statement.

Analysis

On the basis of the undisputed evidence, I find that the Tenant is obligated to pay monthly rent of \$1,300.00 by the first day of each month.

On the basis of the undisputed evidence, I find that the Tenant failed to pay rent of \$1,300.00 for December of 2012. On the basis of the testimony of the Landlord, I accept that the Tenant had the right to deduct \$280.00 from the rent payment in December. In the absence of evidence to corroborate the Tenant's declaration that they had the right to deduct \$1,055.00 from the rent payment for December, I find that the Tenant has failed to establish that the Tenant had the right to deduct more than \$280.00. I therefore find that the Tenant still owes the Landlord \$1,020.00 in rent for December of 2012.

On the basis of the undisputed evidence, I find that the Tenant has not paid rent for January of 2013 and that the Tenant must pay \$1,300.00 in rent for January of 2013.

I have made no finding on whether rent is owed for February and March of 2013, as those issues were not in dispute at the hearing on January 23, 2013.

I find that the testimony of the Landlord in regards to service of the Ten Day Notice to End Tenancy is more compelling than the Tenant's written declaration that the Notice to End Tenancy was not received. For me to accept that the Tenant did not receive the Notice to End Tenancy, I would have to accept that the Tenant did not receive the documents that were sent by registered mail on

December 24, 2012 and that the Tenant did not receive the Notice that was posted on the door on December 12, 2012. I find this declaration to be very self serving and I find it highly unlikely that at least one of those methods of service was not successful. I further find that if the declaration were true, the Tenant would have attended the reconvened hearing to support the written declaration.

I therefore find that the Tenant was properly served with the Ten Day Notice to End Tenancy, either by registered mail or by posting it on the door, although I am unable to determine with certainty, that both methods of service were successful. I find that the Tenant had been served with the Ten Day Notice to End Tenancy by December 31, 2012, pursuant to section 71(2)(b) of the *Act*.

Section 46(4) of the *Act* stipulates that a tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession that is effective two days after it is served upon the Tenant. **As I have found no reason to vary the arbitrator's Order of Possession, dated January 23, 2013, that Order remains in full force and effect and that the Tenant is obligated to comply with that Order.**

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 find that the Landlord has established a monetary claim, in the amount of \$2,370.00, which is comprised of \$2,320.00 in unpaid rent and \$50.00 in compensation for filing the Application for Dispute Resolution. This amount is slightly different than the amount awarded by the arbitrator. I therefore set aside his monetary Order for \$2,350.00 and I replace it with a monetary Order for \$2,370.00. In the event that the Tenant does not comply with this Order, the new Order 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 05, 2013

Residential Tenancy Branch