



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord; the tenant and the tenant's witness.

At the original hearing the tenant testified that he had not received the landlord's notice of hearing documents and despite the landlord's evidence being served by registered mail on February 19, 2013 in addition to the landlord's request to amend their Application to include additional monetary claims I granted a short adjournment.

During the adjournment I ordered the landlord to serve the tenant in person the following day with all of their documents and I ordered the tenant to serve the landlord with his evidence that he had not yet served on the landlord at all. I also ordered that each party could submit additional evidence to me no later than the end of business on March 14, 2013.

The landlord did submit additional evidence and an additional amendment in accordance with my order, and although the evidence was not available to me at the start of the hearing I allowed the parties to give testimony regarding it. Mid way through the hearing the evidence was delivered to me and I informed the parties of this.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for compensation for a lease breaking fee; for 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, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on June 9, 2012 for a 1 year fixed term tenancy beginning on June 9, 2012 for the monthly rent of \$980.00 due on the 1st of each month and a security deposit of \$980.00 was paid. The tenancy agreement has a clause that states: "To terminate the lease prior to the expiry date on the 9 day of June 2013 the tenant will be required to pay \$400.00 and must give 1 calendar month's notice. The tenant agrees that the lease breaking sum may be deducted from the security deposit or otherwise be paid."; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 4, 2013 with an effective vacancy date of January 14, 2013 due to \$1,134.44 in unpaid rent.

The landlord testified the tenant failed to pay the full rent owed for the months of December 2012, January, February, and March 2013 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on January 4, 2013.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The landlord submits the tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord seeks an order of possession and a monetary order in the amount of \$3,717.26 for unpaid rent; \$145.82 an unpaid utility bill; and \$400.00 for a lease breaking fee.

The tenant submits that he did not receive the 10 Day Notice to End Tenancy for Unpaid Rent as described but that he received a different 10 Day Notice on January 1, 2013 indicating that his unpaid rent amount was \$980.00. The tenant submits that as a result of this notice he borrowed \$2,000.00 from his brother and paid rent up to and include a portion of March 2013.

The tenant submits that he placed the rent, in cash, through the mail slot in the office where he had paid rent in cash in that manner on several occasions before. The tenant's witness confirmed that he loaned his brother \$2,000.00 and that he put an envelope in the mail slot but he could not confirm that the envelope contained any cash.

The tenant also submits that he was unaware that there was any problem and that the landlord had received the rent because he had not heard anything from the landlord in regards to the notice after he had deposited the cash into the mail slot, until he got a hold of the landlord's agent to arrange the payment of the balance of March 2013 rent that the landlord informed him there was a hearing.

Analysis

Based on the absence of any evidence to support the tenant's version of events, such as a copy of the 10 Day Notice that he says he did receive and the testimony of the tenant's brother I accept that the tenant has been served with notice to end tenancy as declared by the landlord.

I also find that the tenant's failure to pick up the registered mail containing the landlord's Notice of Hearing documents was a deliberate act on the part of the tenant to avoid service and to further his position that he was unaware of any problems with the payment of rent.

I find the notice is deemed to have been received by the tenant on January 7, 2013 and the effective date of the notice is amended to January 17, 2013, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. I also accept the tenant has failed to pay rent in the amounts claimed by the landlord, including the charges for the utility bill included in the landlord's evidence.

From the wording of the clause in the tenancy agreement, more specifically I note that no reference to this fee being for liquidated damages that would represent a genuine pre-estimate of the costs to re-rent the unit, I find the landlord is seeking to recover a fee charged to the tenant to end the tenancy. Pursuant to Section 7 of the Residential Tenancy Regulation, I find that the lease breaking fees are not allowed as a fee a landlord may charge under the Regulation.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,367.26** comprised of \$3,171.44 rent owed; \$145.82 utilities owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$980.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,387.26**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 18, 2013

Residential Tenancy Branch

