



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – OPR, MNR

For the tenant CNR

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord has applied for an Order of Possession for unpaid rent and for a Monetary Order for unpaid rent. The tenant has applied to cancel the Notice to End Tenancy.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the tenant was permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the tenant entitled to cancel the Notice to End Tenancy?

Background and Evidence

The parties' dispute when the tenancy started. The landlord testifies that the tenant moved into the unit on December 09, 2012, the tenant testifies that it was later in the month. The landlord testifies that rent is \$700.00 per month and is due on the first of each month. The tenant testifies rent is \$400.00 per month. The parties agree that no security deposit has been paid. The parties agree that there is no written tenancy agreement in place.

The landlord testifies that the tenant was served with a 10 Day Notice to End Tenancy on February 01, 2013. The landlord testifies that this was served in person to the tenant with his son-in-law acting as a witness. The landlord testifies that he keeps a log book of anything associated with the tenancy which shows service of documents such as Notices to End Tenancy. The landlord has not called his son-in-law to give testimony under oath and has not provided a copy of the log book in documentary evidence.

The landlord testifies the tenant was served the 10 Day Notice because no rent or security deposit has been paid by the tenant since the commencement of the tenancy. The landlord testifies that he did sign a document for Disability as the tenant had informed the landlord that Disability would be paying the rent and security deposit. The landlord testifies that he did not receive any disability rent cheques or a cheque for the security deposit. The landlord testifies that someone from the Disability Office called the landlord about the tenants rent cheques but this was after the landlord had served the tenant with the Notice to End Tenancy. The landlord testifies that he explained this to the person who had contacted the landlord and the landlord was informed that the rent cheques and cheque for the security deposit were going to be cancelled. The landlord testifies that the tenant told the landlord he had to go and sign a form at service BC Office about a missing cheque but as disability had already informed the landlord that the cheques had been cancelled the landlord did not need to go and sign the form.

The landlord testifies that the tenant's written statement is full of inaccuracies. The tenant has stated that she viewed the unit on December 12, 2012 when in fact it was December 08, 2012. The tenant moved into the unit on December 09 and not December 15, 2012. The landlord testifies that it is the tenant's obligation to pay rent on time and not the landlords to chase the tenant for the rent. The landlord testifies that the tenant would say as it was Christmas that the tenant would make good tips at work however no rent was paid then. The tenant's husband said he would make some money but still no rent was paid.

The landlord testifies that as the tenant has paid no rent the landlord has applied to recover the unpaid rent for December prorated to \$350.00, rent for January of \$700.00, rent for February of \$700.00 and as the tenant has not paid any rent for March the landlord would like to amend his application to include rent for March of \$700.00. The landlord also seeks an Order of Possession to be effective as soon as possible.

The tenant disputes the landlords claims the tenant testifies that as the tenant is on disability that Disability pay all the security deposit and rent. A rent cheque and security deposit cheque were sent to the landlord by the Disability Office on December 17, 2012 after the landlord had signed a social assistance form. The tenant testifies that this form shows that rent is only \$400.00 per month and the security deposit was \$200.00. The tenant has provided a copy of this form in evidence after the hearing had concluded.

The tenant testifies that the first cheques were not received by the landlord and the landlord was informed by Disability that the landlord had to go to Service BC Office to sign a form to state that if the missing cheques turned up that the landlord would not cash them. The landlord would then be issued with new cheques at the service BC office.

Analysis

With regard to the tenants application to cancel the 10 Day Notice to End Tenancy; the Notice informs the tenant that the tenant has five days to either pay the outstanding rent or file an application to dispute the Notice. There is some disagreement as to which day the Notice was served upon the tenant; the tenant testifies that the notice was not served until February 03, 2013 the landlord testifies that the notice was served on February 01, 2013. In this matter the landlord has the burden of proof to determine the day the Notice was actually served upon the tenant and when it becomes one person's word against that of the other then the burden of proof is not met. Therefore I find the tenant did file her application within the five allowable days so I will consider the tenants application.

There is also a contradiction about how much rent was agreed upon at the start of the tenancy. The tenant argues that rent was \$400.00 the landlord argues that rent is \$700.00. The burden of proof also falls to the landlord to provide corroborating evidence to determine how much the rent was agreed upon. The landlord did not provide a tenancy agreement for both parties to sign and I have no other evidence from the landlord to show that rent was \$700.00 per month. The tenant has provided a shelter assistance document which has been signed by both parties which states that the rent is \$400.00 per month and the security deposit was \$200.00. Therefore I find the tenants evidence more compelling as to the amount of rent agreed upon.

The tenant agrees that no rent has been paid during the tenancy, although the tenant argues that this was the fault of the Disability Office for sending the cheques to the wrong address and the landlord for not collecting the cheque and signing a form at the Service BC Office. The landlord argues that as the Disability Office had cancelled the cheques he was not required to go and sign a form and collect any cheques.

I have considered both arguments in this matter and find that at the time of serving the tenant with the 10 Day Notice, rent was outstanding for December, 2012 and January,

2013. However as I have determined that the rent was \$400.00 per month I must adjust the landlords claim accordingly. I therefore find that the tenant owes rent for December, 2012 of \$200.00 and rent for January and February of \$400.00 for each month. With regards to the landlord request to amend the application to include unpaid rent for March, 2013; I refer the parties to the Residential Tenancy Policy Guidelines #3 which states, in part,

In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

A tenant is responsible for ensuring that rent is paid on or before the first day of each month. Irrespective of where that rent comes from, it remains the tenant's responsibility and not that of the landlords. Consequently I find the landlord is entitled to recover unpaid rent for March, 2013 of \$400.00. The landlord will receive a Monetary Order to the amount of \$1,400.00 for unpaid rent pursuant to s. 67 of the *Act*.

The landlord served the tenant with a 10 Day Notice and as I have determined that this was served in person on February 03, 2013 the tenant had five days to either pay the rent or file an application to cancel the Notice. The tenant did not pay the rent and although the tenant did file an application to cancel the Notice the rent remains unpaid. I therefore find the landlord is entitled to an Order of Possession based on the 10 Day Notice and the effective date of the Notice has been amended to February 13, 2013 pursuant to s. 53 of the *Act*. As that date has now passed, I will grant an Order of Possession effective 2 days after service on the tenant.

As the 10 Day Notice has been upheld the tenant's application to cancel the Notice is denied.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$1,400.00. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenant's application is dismissed. The 10 Day Notice to End Tenancy for unpaid rent will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on the tenant. This order must be served on the tenant and may be filed in the Supreme 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