



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST REALTY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF
 CNR RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenant.

The Landlord filed on March 14, 2013, seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on March 7, 2013 and amended his application on March 11, 2013, to obtain an Order to cancel a Notice to end tenancy for unpaid rent and to obtain an order to be allowed reduced rent for repairs, services, or facilities agreed upon but not provided.

The Landlord affirmed that the Tenant was served copies of the application for dispute resolution and notice of hearing documents by registered mail on March 18, 2013. Canada Post tracking receipts were provided in the Landlord's evidence.

The Tenant appeared at the hearing and argued that he had not received the Landlord's evidence. During the hearing the Landlord checked the Canada Post tracking website and confirmed that they attempted delivery and left a final notice card on March 25, 2013. Case law has established that refusal to accept or pick up registered mail does not avoid service. Based on the submissions of Landlord I find the Tenant is deemed served notice of this proceeding and copies of the Landlord's evidence, in accordance with Section 90 of the Act.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 10 Day Notice be upheld or cancelled?
2. Should the Landlord be issued an Order of Possession?
3. Should the Landlord be awarded a Monetary Order?
4. Should the Tenant be granted an order for reduced rent?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the 10 Day Notice issued March 2, 2013; e-mails between the Landlord and Tenant; the tenancy agreement; and a tenant ledger.

The Tenant submitted documentary evidence which included a copy of the 10 Day Notice.

The parties confirmed they entered into a month to month tenancy that began on February 1, 2011. Rent is payable on the first of each month in the amount of \$1,400.00 and on January 27, 2011, the Tenant paid \$700.00 as the security deposit plus \$700.00 as the pet deposit.

The Landlord testified that when the Tenant failed to pay the January, February, and March 2013 rents she posted a 10 Day Notice to end tenancy to his door on March 2, 2013. He continues to occupy the unit and has not made any payments towards rent.

The Tenant testified and confirmed that he has not paid rent for January, February, March, or April 2013. He wanted to have the opportunity to negotiate with the Landlord and maybe catch up on his past rent by doing some repairs to the rental unit. He is a cabinet maker and would like to work on the rental unit in exchange for past rent. He stated that he had previously lost his job but has recently been hired in a commission sales position. He advised that it will take him some time to accumulate commissions to pay his rent and requested the Landlord continue to be lenient with him.

The Landlord stated that she is not in a position to negotiate and she wishes to proceed with obtaining an Order of Possession and a Monetary Order for unpaid rent.

Analysis

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement.

Section 46 of the Act provides that if a tenant does not pay their rent the landlord may end the tenancy by serving the tenant with a 10 Day Notice for unpaid rent.

I accept the undisputed evidence that the Tenant received the 10 Day Notice on March 2, 2013, after it was posted to his door. Therefore, I find the effective date of the Notice is **March 12, 2013**, in accordance with section 46 of the Act. The Tenant did not pay the rent, therefore, this tenancy ends on the effective date of the Notice and the Tenant must vacate the rental unit to which the notice relates. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$4,200.00 which was due January, February, and March 1, 2013 (3 x \$1,400.00). The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$4,200.00**.

As noted above this tenancy ended **March 12, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy and loss of rent for the unit for April 2013 and not payment for rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of April 2013, in the amount of **\$1,400.00**, pursuant to section 62 of the Act.

The Landlord has been successful with their application; therefore, I award recovery of the **\$50.00** filing fee.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Having upheld the 10 Day Notice above, I find the Tenant's application has no merit and it is dismissed without leave to reapply.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$5,650.00** (\$4,200.00 + \$1,400.00 + \$50.00). This Order is legally binding and must be served upon the Tenant.

I HEREBY DISMISS the Tenant's application; without leave to reapply.

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: April 08, 2013

Residential Tenancy Branch

