



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC

Introduction:

This hearing was convened in response to the Landlord's 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, and to retain all or part of the security deposit. As the parties agree that the security deposit that was paid at the start of the tenancy has been returned to a former co-tenant, the application to retain the security deposit has been dismissed.

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 Tenant was highly disruptive at the start of the tenancy and repeatedly indicated that he did not wish to participate in this hearing. He was advised that he has the right to disconnect from the teleconference but that the hearing would proceed in his absence. He was placed on mute for several minutes at the start of the hearing, after which he did not disrupt the hearing.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on February 01, 2013; that the Tenant was required to pay monthly rent of \$1,100.00 by the first day of each month; that rent was paid in cash in February and March of 2013, for which receipts were provided; and that the Tenant is still occupying the rental unit.

The Landlord stated that no rent was received for April of 2013. The Advocate for the Tenant, who is the Tenant's girlfriend, stated that rent for April was paid, in cash, on April 02, 2013 or April 03, 2013.

The Advocate for the Tenant stated that the Tenant has a receipt on the bottom of an "Intent to Rent Form", which indicates that rent was paid for March and April. The Landlord stated that he did sign the form referred to by the Tenant but the form has been altered to indicate rent was paid for April. A copy of this document was not submitted in evidence.

The Landlord and the Tenant agree that rent was not paid for May of 2013.

The Landlord stated that on April 24, 2013 he personally served the Advocate for the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of May 04, 2013. The Notice declared that the Tenant owed \$1,375.00 in rent that was due on April 01, 2013. The Landlord that the \$1,375.00 included rent from April and \$275.00 for a security deposit that was outstanding.

The Advocate stated that she gave the Notice to End Tenancy to the Tenant on April 26, 2013 and that the Tenant did not file an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy.

The Landlord was not permitted to testify regarding money he has allegedly given to the Tenant to encourage him to vacate the rental unit, as that is not an issue in dispute at these proceedings.

Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,100.00 by the first day of each month.

On the basis of the undisputed evidence, I find that the Tenant did not pay rent for May of 2013. I therefore find that the Tenant owes the Landlord \$1,100.00 in rent for May.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In regards to the claim for unpaid rent of \$1,100.00 from April of 2013, the burden of proving that rent was not paid in cash, as claimed by the Tenant, rests with the Landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts help to establish when a rent payment has not been made. When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends

credibility to a landlord's claim that a cash payment has not been made. When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant will provide a receipt for a cash payment that has been made.

In these circumstances the Landlord has provided receipts for the two payments that the parties agreed were made. This causes me to conclude that the Landlord generally provides receipts when rent is paid in cash. I find that the Tenant has submitted insufficient evidence to show that rent was paid for April of 2013. In reaching this conclusion I was heavily influenced by the fact that the Tenant did not submit a copy of the receipt the Tenant has for the rent payment that was allegedly made on April 02, 2013 or April 03, 2013, and by the Landlord's testimony that the receipt is fraudulent. As I have not been able to view the alleged receipt and make an independent decision regarding its authenticity, I cannot rely on it as evidence that rent has been paid.

Conversely, I find that the Notice to End Tenancy that the Landlord served on April 24, 2013 lends credibility to the Landlord's testimony that rent was not paid for April. I think it is highly unlikely that a Tenant would not file an Application for Dispute Resolution seeking to set aside a Notice to End Tenancy for Unpaid Rent if the rent had been paid.

For these reasons I favor the testimony of the Landlord over the evidence of the Tenant and I find that the Tenant owes the Landlord \$1,100.00 in unpaid rent from April of 2013.

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 April 24, 2013 the Advocate for the Tenant received a Notice to End Tenancy that directed the Tenant to vacate the rental unit by May 04, 2013, pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that on April 26, 2013 the Advocate for the Tenant gave this Notice to End Tenancy to the Tenant.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving 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.

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.

The Landlord has established a monetary claim, in the amount of \$2,200.00, for unpaid rent. Based on these determinations I grant the Landlord a monetary Order for the amount of \$2,200.00. 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: May 27, 2013

Residential Tenancy Branch