



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNR, MNDC, FF
Tenant: CNR, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

During the hearing the tenant testified that he wished to withdraw the portion of his Application dealing with internet surveillance. As such, I have amended his Application to exclude this matter.

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; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and to an order to have the landlord stop internet surveillance, pursuant to Sections 28 and 46 of the *Act*.

Background and Evidence

The parties agree the tenancy began as a month to month tenancy on November 5, 2012 for the monthly rent of \$650.00 due on the 5th of each month and a security deposit of \$360.00 was paid.

The landlord provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on April 10, 2013 with an effective vacancy date of April 10, 2013 due to \$650.00 in unpaid rent.

The landlord testified the tenant failed to pay the full rent owed for the month of April 2013 and that when the landlord sought payment from the tenant he indicated that he would not be paying rent. The landlord submits he then served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent personally on April 10, 2013.

The tenant submits that he had paid the landlord's wife rent on April 5, 2013. The tenant states he paid her cash and that the landlord does not provide receipts. The landlord confirmed that he usually does not issue receipts for rent because the tenant has never asked for a receipt. The landlord also testified that his wife has not received any rental payment from the tenant.

The parties also agree the tenant has not paid rent for the month of May 2013. The tenant however testified that he has money that he can provide to the landlord for rent for May 2013.

Analysis

In the case of verbal testimony, I find that when accounts of events are clear and both the landlord and tenant agree on what occurred, there is no reason why such accounts would not be considered sufficient evidence of events. However when the parties disagree with what may have occurred, the verbal accounts, by their nature, are virtually impossible for a third party to interpret.

In addition, I find that it is much more difficult for one party to provide evidence of something not occurring than it is for a party to provide evidence that some event occurred. In the case before, the non-receipt of rent is more difficult to provide evidence of than the payment of rent.

For example, the payment of rent may include the withdrawal of monies from a tenant's bank account for which they would be able to provide some documentary evidence at least lending itself to confirming the tenant's position. However, the landlord cannot provide any documentary evidence to support that he did not receive any rent monies.

For these reasons, I find the burden of proof rests more with the tenant to provide sufficient evidence that he has paid rent than with the landlord to provide evidence that he did not receive rental payment. As the tenant has provided no corroborating evidence at all to substantiate the payment occurred, I find, based on the balance of probabilities that the tenant has failed to pay rent.

I have reviewed all documentary evidence and testimony and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on April 10, 2013 and the effective date of the notice is amended to April 20, 2013, pursuant to Section 53 of the *Act*.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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 and grant a monetary order in the amount of **\$1,350.00** comprised of \$1,300.00 rent owed and the \$50.00 fee paid by the landlord for this application.

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: May 08, 2013

Residential Tenancy Branch

