



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, 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 the landlord and the tenant.

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)*.

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 10, 2012 for a month to month tenancy beginning on May 15, 2012 for the monthly rent of \$700.00 plus \$275.00 utilities due on the 10th of each month and a security deposit of \$325.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on April 6, 2013 with an effective vacancy date of April 6, 2013 due to \$775.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the month of April 2013 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent personally on April 6, 2013.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord submits the tenant did pay \$400.00 on April 26, 2013 and \$600.00 on May 2, 2013 leaving a balance of

\$725.00 owing. The tenant believes he owes the landlord only \$225.00 for April 2013 rent but he cannot recall when or how much he paid the landlord.

The tenant submits that he has moved out and the landlord has entered into a new tenancy agreement with the mother of the tenant's children, effective May 1, 2013. The tenant testified the mother of the tenant's children moved into the rental unit with him and the children in late February 2013; that he moved out of the rental unit at the end of April 2013; and that two of his three children are remaining in the rental unit with their mother.

The landlord testified that he has filled out a Ministry of Social Development (MSD) shelter information form listing the mother of the tenant's children as living at the rental unit but that he has not entered into a tenancy agreement with her.

Analysis

While I accept the landlord has filled out a shelter information form for MSD, I agree with his position that it does not constitute a tenancy agreement. A shelter information form is used by the MSD as a method to confirm where one of their clients is living and how much rent they are obligated to pay and if they are required to provide a security deposit.

A tenancy agreement is an agreement between a landlord and tenant and contains significantly more terms than just how much rent is or if a security deposit is required. As the landlord has provided a copy of the tenancy agreement between himself and the tenant I accept the landlord is aware of what a tenancy agreement would be and that he would have entered a new agreement had he entered into a new tenancy with any other party.

Based on the above and as the mother of the tenant's children and two of his children were living in the rental unit prior to May 1, 2013 along with the tenant and they continue to do so; and since the tenant provided, in the hearing, the dispute address as his mailing address. I find that no new tenancy has been entered into between the landlord and the mother of the tenant's children but rather these parties are living in the rental unit under the tenancy agreement between the tenant and the landlord.

I have reviewed all documentary evidence 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 6, 2013 and the effective date of the notice is amended to April 16, 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.

As the tenant has been unable to provide any testimony as to when or how much he has paid the landlord for rent for April, 2013 and since I find that he is still responsible for May, 2013 I accept the landlord's accounting for the balance of rent owing as \$725.00.

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 and I grant a monetary order in the amount of **\$775.00** comprised of \$725.00 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 16, 2013

Residential Tenancy Branch

