



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This was a cross-application hearing.

The landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution. The 2 co-tenants were named as respondents.

The male tenant applied for more time to cancel a Notice to End Tenancy, compensation in the sum of \$3,800.00 as damage or loss under the Act, an Order the landlord comply with the Act, make repairs to the unit, that conditions be set on the landlord's right to enter the unit and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant said that he did not receive a copy of the 1 Month Notice to End Tenancy for Cause until he was given the Notice of Hearing package, sent by registered mail and received on May 18, 2013. The tenant said that he wished to proceed with his application to request more time to cancel that Notice and that he wished to proceed with the hearing in relation to cancelling the Notice issued for cause.

I determined that the hearing would proceed allowing the tenant to dispute the 1 Month Notice. He applied to dispute the Notice on May 22, 2013, within the required time-frame if it had been received on May 18, 2013.

The tenant indicated several matters of dispute on his application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to set aside or cancel the Notice to End Tenancy for Cause and I dismissed the balance of the tenant's claim with liberty to re-apply.

It was explained that evidence is not transferred between files.

The landlord's application indicated that the landlord was requesting an Order of possession for unpaid rent; however the Notice issued and supplied as evidence was a 1 Month Notice to End Tenancy for Cause, based on repeated late payment of rent. The application was amended to reflect the intention of the landlord and the tenant's desire to cancel the Notice issued for cause.

The female respondent was served with Notice of this hearing via the same method as the male tenant; sent to the rental unit address via registered mail on May 15, 2013. The landlord provided the tracking number for service. The female respondent did not attend the hearing; however I find she was served with Notice of the hearing, effective the 5th day after mailing.

The landlord supplied a copy of an audio file on disc; the tenant received that disc but said it contained music. An attempt was made to listen to the disc during the hearing and even at maximum volume the quality was poor and I could not hear what was being said. As required by the Rules of Procedure, the landlord did not attempt to confirm with the tenant, at least 5 days prior to the hearing that the tenant had been able to access the disc contents. Therefore, the audio recording was of no value and was set aside.

The tenant agreed to obtain a copy of his bank statement showing a \$2,250.00 withdrawal made on March 31, 2013; in support of his submission that the cash had been obtained for payment of rent to the landlord. The tenant agreed to make this submission to the Residential Tenancy Branch by June 2, 2013. A copy of the bank information was also to be given by the tenant, to the landlord, on June 3, 2013.

The landlord agreed to submit a copy of the original tenancy agreement to the RTB no later than June 3, 2013; a copy will be given to the tenant, by the landlord, on that date.

The landlord was provided with the opportunity to make a written reply to the tenant's bank statement; no later than June 12, 2013 at noon. That written response was to be submitted to the RTB and to the tenant.

On June 5, 2013 the landlord made an evidence submission that included a copy of the tenancy agreement. All other documents, that were not specifically requested, were set

aside. The landlord indicated that a copy of the banking information had not been supplied by the tenant.

The tenant did not make a submission of the banking evidence that was requested.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for Cause as the result of repeated late payment of rent?

Is the landlord entitled to a monetary Order for unpaid May, 2013 rent plus \$200.00 in utility costs?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy commenced in December 2006, rent is currently \$900.00 per month due on the 1st day of each month.

The copy of the tenancy agreement supplied as evidence indicated that the tenants agreed to pay ½ of utility costs and that rent was initially \$800.00 per month. There was no dispute that rent was currently \$900.00 per month. A deposit in the sum of \$400.00 was paid.

The landlord has claimed \$200.00 in unpaid utilities; copies of bills were not supplied as part of the evidence submission made prior to the hearing.

Initially the landlord confirmed that he accepts cash rent payments and that receipts have not been issued, as the tenants did not request receipts. Later in the hearing the landlord said that he had in fact issued some receipts, earlier in the tenancy.

The tenant said that he has paid rent 3 months in advance and that when he does this the landlord provides a rent reduction in the sum of \$50.00 each month. The tenant stated he had never received a rent payment receipt.

The tenant said that on March 31, 2013 he withdrew \$2,550.00 from the bank and gave the landlord this cash for rent owed from April to June, 2013 inclusive. The landlord said he did not receive that money and that the tenant has never paid rent 3 months in advance.

The landlord said he did not receive May rent owed in the sum of \$900.00 and requested compensation in that amount.

The tenant testified he will not be paying June 2013 rent, as the advance payment made on March 31, 2013 covered the rent owed to the end of June.

On March 6, 2013 the landlord issued a 1 Month Notice to End Tenancy for Cause; the Notice was posted to the tenant's door at 4 p.m. with the landlord's wife present as a witness. The Notice had an effective date of May 1, 2013. The 1 reason for the Notice indicated that the tenant's had been repeatedly late paying rent.

The landlord stated that he had issued two 10 day notices to End Tenancy for Unpaid Rent; on November 5, 2012 for October and November, 2012 rent owed in the sum of \$1,800.00. A 2nd Notice was issued on March 5, 2013 for March rent owed in the sum of \$900.00. The Notices were posted to the door. The tenant said neither he nor his co-tenant received either of those Notices and that rent was not late.

The landlord stated that as rent was late in October, November 2010 and in March 2013 the tenant has been repeatedly late paying rent.

Analysis

In the absence of baking evidence that was specifically requested of the tenant, I find that the landlord is entitled to compensation in the sum of \$900.00 for unpaid May 2013 rent. The tenant testified that he had made a 3 month advance rent payment and that he could supply proof by way of a copy of his bank statement. The tenant did not supply this evidence; which has caused me to question the credibility of the tenant's submissions made during the hearing. In the absence of evidence that the tenant testified he could submit; I prefer the testimony of the landlord over that of the tenant.

In relation to the request for an Order of possession, I find that the tenant did receive the Notice and that he understood the need to dispute the Notice. The landlord said the Notice had been posted to the tenant's door on March 6, 2013 and I find, on the balance of probabilities, that the Notice was served effective March 9, 2013. In the absence of the female respondent, I find that it is just as likely that she removed the Notice from the door. If a co-tenant is served a copy of a Notice, Residential Tenancy policy suggests that all co-tenants are served with Notice. I find that to be a reasonable stance.

Policy suggests that 3 late payments are the minimum number sufficient to justify a notice for cause. It does not matter whether the late payments were consecutive or whether other payments were made on time. As I have determined that the credibility of the tenant is in question, I have preferred the landlord's testimony that rent was paid late in November and December 2012 and late in March, 2013. I also find, on the balance of probabilities, that the rent is late for May, 2013, as it has not been paid.

Therefore, I find that the 1 Month Notice to End Tenancy for Cause issued on March 6, 2013, is of force and effect as a result of repeated late payment of rent and that the tenant's application to dispute the Notice is dismissed.

Therefore, I find that the tenancy ended on the effective date of the Notice, May 1, 2013 and that the landlord is entitled to an Order of possession, pursuant to section 55 of the Act. As the tenants failed to vacate the unit, in anticipation of this hearing, the tenants continue to be responsible for rent owed.

In the absence of copies of utility bills or evidence of thirty days written demand for payment was given to the tenants, I find that the claim for utility costs is dismissed. Section 46(6)(b) of the Act requires thirty days written notice be given and there was no evidence before me that this occurred. Copies of utility bills were not supplied as evidence prior to the hearing.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain the tenant's \$400.00 security deposit plus interest in the sum of \$12.27, in partial satisfaction of the monetary claim. The tenant's claim for return of the deposit is dismissed.

I find that the landlord has established a monetary claim, in the amount of \$950.00, which is comprised of unpaid May 2013 rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$412.27, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$537.73. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause is dismissed.

The landlord is entitled to an Order of possession and a monetary Order.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 12, 2013

Residential Tenancy Branch

