



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNR, MNSD, FF, OLC, PSF, LRE, LAT

Introduction:

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution. On the basis of the information on the Application for Dispute Resolution, I find that it is readily apparent that the Landlord is also seeking compensation for lost revenue from August of 2013 and I amend the Landlord's Application for Dispute Resolution to include an application for a monetary Order for money owed or compensation for damage or loss.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied to set aside a Notice to End Tenancy, for an order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an order requiring the Landlord to provide services or facilities required by law; to suspend or set conditions on the Landlord's right to enter the rental unit; and for authorization to change the locks.

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 Landlord submitted documents to the Residential Tenancy Branch. The Landlord stated that copies of these documents were posted to the Tenant's door on August 13, 2013. The Tenant acknowledged receiving some documents on August 13, 2013 and they were accepted as evidence for these proceedings. The Agent for the Tenant stated that the Tenant did not receive a copy of the tenancy agreement or the Notice to End Tenancy that the Landlord allegedly posted on August 13, 2013. The parties agreed to proceed with the hearing and to consider the need for an adjournment if it became necessary for me to physically view the tenancy agreement or the Notice to End Tenancy. We were able to conclude the hearing without the need for an adjournment.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were posted at the residential complex on August 09, 2013. The Landlord acknowledged receipt of the Tenant's evidence on August 10, 2013 and it was accepted as evidence for these proceedings.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession for unpaid rent or should the Notice to End Tenancy be set aside; is the Landlord entitled to a monetary Order for unpaid rent/lost revenue; should the security deposit be retained by the Landlord or returned to the Tenant; is there a need to issue an order requiring the Landlord to comply with the *Act* or the tenancy agreement; is there a need for an order requiring the Landlord to provide services or facilities required by law; is there a need to suspend or set conditions on the Landlord's right to enter the rental unit; and should the Tenant be granted authorization to change the locks?

Background and Evidence:

The Landlord and the Tenant agree that they entered into a tenancy agreement which required the Tenant to pay monthly rent of \$450.00 by the first day of each month and that the Tenant paid a security deposit of \$225.00. The Landlord contends that they entered into a written tenancy agreement and the Tenant contends that they entered into a verbal tenancy agreement.

The Landlord and the Tenant agree that the Tenant only paid \$200.00 in rent for July and that no rent has been paid for August. The Landlord contends that the rent of \$200.00 for July was paid, in cash, on July 05, 2013 and the Tenant contends it was paid on July 04, 2013.

The Agent for the Tenant stated that the Landlord told the Tenant he would only have to pay \$200.00 in rent for July if he agreed to vacate the rental unit by July 15, 2013; that the Tenant did not agree to this offer; that the Landlord had told the Tenant that she was selling the unit and that he would have to vacate; and that she has never served him with a Two Month Notice to End Tenancy for Landlord's Use of Property.

The Landlord stated that she did not tell the Tenant he would only have to pay \$200.00 in rent for July if he agreed to vacate the rental unit by July 15, 2013; and that she did tell the Tenant that she would have to sell the unit and that he would have to vacate by August 31, 2013, although she did not serve him with a Two Month Notice to End Tenancy for Landlord's Use of Property.

The Landlord and the Tenant agree that the Tenant typically paid rent in cash and that they would arrange a time to meet via text messaging. The parties agree that the Landlord has not made arrangement to collect rent for August of 2013. There is no

evidence that the Tenant made any attempt to pay rent after the \$200.00 in rent was paid in early July.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent was personally served to the Tenant on July 09, 2013. The parties agree that the Notice had an effective date of July 19, 2013 and that it was signed by the Landlord.

The Agent for the Tenant stated that on July 18, 2013 the Tenant permitted the Landlord to enter the rental unit. The Landlord does not dispute this testimony.

The Agent for the Tenant stated that on July 17, 2013 the Tenant received written notice of the Landlord's intent to enter the rental unit on July 19, 2013, for the purpose of installing additional locks in the rental unit. The Landlord stated that she wished to install locks on rooms within the residential complex that the Tenant was not permitted to access. The Tenant agrees that there were rooms within the residential complex that he was not permitted to use.

The Agent for the Tenant stated that on July 23, 2013 the Landlord opened the door with a key, without announcing herself, but she was unable to access the rental unit as the chain lock was engaged. The Landlord denies attempting to access the unit on this date. The Tenant contends that the incident was reported to the police but a copy of the police report was not submitted.

The Agent for the Tenant stated that the application for an order requiring the Landlord to comply with the *Act* relates to the Tenant's belief that the Landlord is required to serve him with a Two Month Notice to End Tenancy if she wishes to end the tenancy because the property is being sold.

The Agent for the Landlord acknowledged that the Application for Dispute Resolution does not specify what services or facilities the Tenant wants the Landlord to provide, although at the hearing she indicated the Tenant wishes to be supplied with a mail key.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$450.00 by the first day of each month. I find that the Tenant is obligated to pay this amount even if there is no written agreement, pursuant to the definition of a tenancy agreement in section 1 of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant has not paid \$250.00 of the rent that was due on July 01, 2013. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$250.00 in outstanding rent to the Landlord.

In reaching this conclusion I have placed no weight on the undisputed evidence that the Landlord told the Tenant she intended to sell the property. Until such time as the Tenant is served with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*, the Tenant does not have the right to withhold rent because the Landlord intends to sell the property. As the Tenant has never been served with a proper Notice to End Tenancy pursuant to section 49 of the *Act*, the Tenant was not obligated to vacate the rental unit because the Landlord intended to sell the property and the Tenant was not entitled to retain any portion of the rent.

In reaching this conclusion I have placed no weight on the Tenant's testimony that the Landlord told the Tenant he would only have to pay \$200.00 in rent for July if he agreed to vacate the rental unit by July 15, 2013. Even if the Landlord did make this offer, which she denies, the Tenant's evidence is that he did not agree to vacate the rental unit by July 15, 2013. As he did not agree to the alleged offer, he did not have the right to withhold any portion of the rent that was due on July 01, 2013. I therefore find that the Tenant should have paid the full amount of rent that was due when the parties met on July 04, 2013 or July 05, 2013.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. As the Tenant has not yet paid all of the rent due for July of 2013 and the Tenant has not established legal grounds to withhold any portion of the rent, I find that the Landlord has grounds to end this tenancy pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that on July 09, 2013 the Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*. I therefore find that the Landlord is entitled to an Order of Possession and I dismiss the Tenant's application to set aside this Notice to End Tenancy.

As the Tenant did not vacate the rental unit by July 19, 2013, I find that he is obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. As he has already been ordered to pay rent for the period between July 19, 2013 and July 31, 2013, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the 20 days in August that he has remained in possession of the rental unit, at a daily rate of \$14.52, which equates to \$290.40.

I find that the Tenant fundamentally breached the tenancy agreement when he did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when he did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that his continued occupancy of the rental unit makes it difficult, if not impossible, for the Landlord to find new tenants for the remainder of August of 2013. I therefore find that the Tenant must compensate the Landlord for the loss of revenue she is likely to experience for the remainder of August, which is \$159.60.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

On the basis of the undisputed evidence, I find that the Landlord did comply with section 29 of the *Act* when she wished to enter the rental unit on July 18, 2013 and July 19, 2013. I therefore can find no reason to suspend or set conditions on the Landlord's right to enter the rental unit or to be grant the Tenant permission to change the locks as a result of either incident.

I find that the Tenant has submitted insufficient evidence to show that on July 23, 2013 the Landlord opened the door to the rental unit with a key, without announcing herself. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates this testimony or that refutes the Landlord's testimony that it did not happen. While the Tenant contends that it was reported to the police, a copy of the report was not submitted in evidence, and there is no evidence to show that the alleged report was true. I therefore can find no reason to suspend or set conditions on the Landlord's right to enter the rental unit or to be grant the Tenant permission to change the locks as a result of this incident.

I dismiss the Tenant's application for an order requiring the Landlord to comply with the *Act*, specifically with the Tenant's request that the Landlord serve the Tenant with a Two Month Notice to End Tenancy. The Landlord is not obligated to serve a Two Month Notice to End Tenancy until the Landlord wishes to end a tenancy pursuant to section 49 of the *Act*. As this tenancy is ending pursuant to section 46 of the *Act*, there is no need for the Landlord to serve a Notice to End Tenancy pursuant to section 49 of the *Act*.

As this tenancy is ending, I find there is no need for the Landlord to provide the Tenant with a mail key.

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 \$750.00, which is comprised of \$700.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to keep the Tenant's security deposit of \$225.00, in partial satisfaction of the monetary claim. Based on these determinations I grant the Landlord a monetary Order for the balance of \$525.00. 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: August 20, 2013

Residential Tenancy Branch

