



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on July 3, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Tenant on July 9, 2013. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on September 1, 1998. The present rent is \$1045 per month payable on the

first day of each month. The tenant(s) paid a security deposit of \$392.50 at the start of the tenancy.

The tenant has failed to pay the rent for the month of July and August the sum of \$2090 remains owing. The tenant(s) have remained in the rental unit.

Tenant's Evidence:

The tenant testified he has lived in the rental unit for over 15 years and has always paid the rent in full when due except for the last few months. He was a model tenant.

He testified that he has three university degrees and for much of the time he was Associate Director of a department at UBC. He testified that he had amassed a significant savings. However, he lost much of it in the recession of 2008. He had a brief recovery but again suffered financial reverses. He has experience health problems.

In July 2012 he was broke and he applied for welfare. It was apparent he could not pay the rent on his own and it was suggested that perhaps this problem could be solved by taking in roommates. He was initially reluctant to do so but could not see any other way.

He testified he approached the building manager in July 2012. She was not friendly to the idea. However, two roommates moved in with him. He discussed the idea with the owner who disapproved of the proposal. The owner gave a number of reasons including a no smoking policy and the need to charge an extra \$100 per person. The manager has been less than friendly with the roommates. From July 2012 to February 2013 the rent for the two roommates was paid by welfare directly to the tenant who, in combination with his rent would pay the landlord. In March 2013 welfare changed their policy and would not pay the rent to the tenant. They stated they required something from the landlord confirming the that two roommates lived in the rental unit and they would then pay the rent directly to the landlord.

The landlord stated they would only accept rent payment from the tenant and they were not prepared to accept a rent payment from welfare in the name of the two roommates.

The tenant testified the owner lied to Welfare in a telephone conversation saying that the two roommates were not living in the rental property. The tenant failed to present evidence from the welfare official to confirm this testimony.

Welfare has refused to pay the shelter portion to the two roommates because there is no confirmation the roommates were living in the rental unit. The roommates have been put under investigation for fraud and the payments to them have been delayed. Similarly the payments to the tenant have been delayed. The rent for June was eventually paid but only after the tenant was required to pay more than his share as the roommates were not given their shelter portion. Welfare has refused to pay the shelter portion for July and August and the rent for these months has not been paid.

The tenant produced a letter from welfare for one of the roommates dated May 9, 2013 that states that a decision on his eligibility will be determined once all documentation has been received and it asks that the roommate provide rent receipts from the landlord from July 2012 until now for review.

The tenant submits the only reason he has been unable to pay the rent is because the landlord lied to the welfare officials about his roommates and because the landlord won't provide receipts.

The representative of the landlord disputes much of this evidence. She testified the roommates have not applied to become tenants which she states is a prerequisite. She also blames the tenant and the roommates for causing a number of disturbances and she testified she has received complaints from a number of the tenants.

I do not accept the evidence of the representative of the landlord that the first time she became aware of the roommates was in February. I find as a fact that the roommates began living in the rental unit around July 7, 2012 and the landlord was aware of that shortly thereafter.

The tenant acknowledges that he has not applied to have the 10 day Notice to End Tenancy cancelled. The Notice states in bold letters that "Tenant: You may be EVICTED if you do not respond to this Notice. You have five 5 days to pay the rent or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch. The tenant failed to give a sufficient explanation as to why he did not apply to have the Notice to End Tenancy cancelled.

Analysis

Section 46 (5) provides as follows:

Landlord's notice: non-payment of rent

46 (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. Section 46(5) of the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Exceptional circumstances do not exist to justify an extension of time. The Notice to

End Tenancy clearly states that a Tenant must file an Application for Dispute Resolution with the Residential Tenancy Branch.

Further, even if it was considered on the merits there is no basis to extend the time to file an Application for Dispute Resolution. The tenant does not have the rent for July and August and there is no assurance he will be able to pay the landlord the outstanding rent. The tenant blames the landlord for interfering with the payment of rent from Welfare. There is no obligation on the landlord to accept the roommates as tenants unless they first apply. The landlord has a legal right to check their references to determine whether they would be appropriate tenants. This is a long term tenancy. In recognition of this I determined it was appropriate to grant an Order for Possession on August 31, 2013.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of July and August and the sum of \$2090 remains outstanding. The landlord did not apply for the rent for August so no award is made for that month. I granted the landlord a monetary order in the sum of \$2090 plus the sum of \$50 in respect of the filing fee for a total of \$2140.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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 12, 2013

Residential Tenancy Branch

