



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LI-CAR MANAGEMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF
 CNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord's Agent (herein after referred to as Landlord) filed on July 26, 2013, seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on July 16, 2013, seeking an Order to cancel a Notice to end tenancy issued for unpaid rent or utilities and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 10 Day Notice to end tenancy issued July 8, 2013, be upheld or cancelled?
2. If upheld, should the Landlord be granted an Order of Possession?
3. Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: Canada Post receipts; a 10 Day Notice issued July 8, 2013; the tenancy agreement; and receipts issued to the Tenant for rental payments.

The Tenant submitted documentary evidence which included a copy of the 10 Day Notice issued July 8, 2013.

The undisputed testimony was that the parties entered into a written month to month tenancy that began on June 1, 2012. Rent was payable on the first of each month in the amount of \$1,600.00 and on May 18, 2012, the Tenant paid \$800.00 as the security deposit.

The Landlord testified that the Tenant did not pay rent in May 2013. A payment was received on June 21, 2013, as per the payment ledger, and was applied to the outstanding balance owed for May 2013. When the Tenant failed to make any further payments towards rent the Landlord posted a 10 Day Notice to end tenancy to the Tenant's door on July 8, 2013. As of the hearing the Tenant has an outstanding balance due of \$4,800.00 which is comprised of June and July 2013 rent, and loss of rent for August 2013.

The Tenant testified and confirmed that he is still residing in the rental unit. He stated that he received the 10 Day Notice on July 9, 2013. He submitted that his twenty two year old daughter went to the Landlord's office, sometime in May, and dropped off cash for payment of May 1, 2013 rent. He stated that when she was there the lady was on the phone so she left the envelope with his rent money on the desk and left without getting a receipt. Then during the third week of May he received a text message from the Landlord's office indicating he had not paid rent. He stated that he had a conversation with someone in the Landlord's office where he told them he would no longer be paying in cash so he arranged to have his daughter drop off six post dated cheques.

The Tenant submitted that his daughter dropped off his June rent payment but he did not know when this payment was made. He said he also had his daughter drop off the post dated cheques; however, he could not provide testimony as to the date the cheques were delivered. He confirmed that the cheques had not been cashed as the money was still in his account.

The Tenant advised that his daughter would not provide testimony in support of his statements as she is no longer on speaking terms with him. He confirmed he did not submit documentary evidence to support issuing cheques to the Landlord.

The Landlord submitted that they take all forms of payment, cash, cheque, and even offer debit and automatic payment withdrawals. The Landlord's Agent testified that the Tenant usually dealt with their front office person who collects rent payments and that at

no time did she receive payment for May 2013 rent or post dated cheques on behalf of the Tenant. All post dated cheques are kept in the safe located in the Agent's office. Each month the Agent removes the post dated cheques and gives them to their staff person to take to the bank. The Agent, front office person nor their staff person recalls receiving post dated cheques for the Tenant and there have been no cheques deposited or located in their safe.

In closing, the Tenant had nothing further to add. The Landlord requested an Order of Possession and Monetary Order plus the filing fee.

Analysis

The undisputed testimony included that the Tenant received the 10 Day Notice to end tenancy on July 9, 2013. Therefore, the effective date of the Notice is **July 19, 2013**, in accordance with section 90 of the Act.

The Tenant made application to dispute the Notice arguing that he paid his rent by post dated cheques that were allegedly delivered to the Landlord's office by his daughter.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Tenant has the burden to prove he paid his rent. The only evidence before me was verbal testimony that his daughter dropped off post dated cheques, which the Landlord has disputed. There is no evidence to support that the Tenant made any effort to pay his rent, even after the Landlord's staff informed him that they had not received payment. Accordingly, I find the Tenant's disputed verbal testimony insufficient to meet the burden of proof that rent was paid, and I dismiss his application to cancel the 10 Day Notice or to recover the filing fee. The 10 Day Notice to end tenancy issued July 8, 2013, is in full force and effect.

The Landlord has been successful in upholding the 10 Day Notice. I accept the Landlord's submission that the June 21, 2013, payment was applied to the outstanding May 2013 rent leaving arrears for June, and July 2013. Therefore, the tenancy ends on the effective date of the Notice, July 19, 2013, and the Tenant must vacate the rental unit to which the notice relates, pursuant to section 46 of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$3,200.00 which was due July 1, 2013 (2 x \$1,600.00). The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$3,200.00**.

As noted above this tenancy ended **July 19, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the

unit for August 2013, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and then they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of August 2013, in the amount of **\$1,600.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent June & July	\$3,200.00
Loss of Rent	\$1,600.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$4,850.00
LESS: Security Deposit \$800.00 + Interest 0.00	<u>-800.00</u>
Offset amount due to the Landlord	<u>\$4,050.00</u>

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$4,050.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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 19, 2013

Residential Tenancy Branch

