



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Arno Hotel
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Landlord's application (filed August 15, 2013): OPR, MNDC, FF

Tenant's application (filed August 20, 2013): MT, CNR, MNDC, OLC, ERP, RP, RR

Introduction

This Hearing was convened to consider cross applications. The Landlord seeks an Order of Possession; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks an extension of time to file an application to cancel a Notice to End Tenancy for Unpaid Rent issued August 6, 2013 (the "Notice"); to cancel the Notice; compensation for damage or loss under the Act, regulation or tenancy agreement; an Order that the Landlord comply with the Act and make regular and emergency repairs to the rental unit; and for a rent reduction.

The parties gave affirmed testimony at the Hearing.

Regarding Service of Documents

The Landlord's agent ("HS") testified that he served the Tenant with the Landlord's Notice of Hearing documents and copies of his documentary evidence by handing the documents to the Tenant at the rental unit on August 15, 2013. The Tenant ("BC") testified that he received only one page, the Notice of Dispute Resolution, and that he was not served with a copy of the Landlord's Application for Dispute Resolution. HS insisted that he served the Tenant with all of the documents. BC stated that he wished to proceed with the Landlord's application in any case.

BC testified that he served the Landlord with his Notice of Hearing documents and copies of his by handing the documents to HS. He stated that he did not remember when he served the Landlord, but thought it was sometime around the beginning of September. HS stated that he was served with BC's Notice of Hearing documents on

September 18, 2013, and that he received copies of BC's documentary evidence "yesterday" (September 26, 2013). HS also wished to proceed.

HS testified that he hand delivered the Notice to End Tenancy for Unpaid Rent (the "Notice") to the Tenant with a witness present on August 6, 2013. BC acknowledged being served on August 6, 2013.

Preliminary Matters

The Landlord's Application for Dispute Resolution and the Notice both have BC's last name spelled incorrectly. Further to the provisions of Sections 62 and 68 of the Act, I amended the Landlord's Application and the Notice to reflect the correct spelling of the Tenant's last name.

The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I find that that BC's monetary claims and requests for Orders are not sufficiently related to the main issue, which is to cancel the Notice. For these reasons, I dismiss the Tenant's application for compensation and other Orders **with leave to reapply**.

BC has applied for an extension of time to apply to cancel the Notice. The Act requires that such an application must be filed within 5 days of receipt of the Notice. Section 66 of the Act provides that the director may extend a time limit established by the Act, but only in **exceptional circumstances**. Section 66 also provides that the director **must not** extend the time limit to make an application to cancel a notice to end a tenancy beyond the effective date of the notice.

In this case, BC filed his application for an extension of time on August 20, 2013. BC was served with the Notice on August 6, 2013. Therefore, pursuant to the provisions of Section 46 of the Act, the effective date of the Notice was August 16, 2013. Therefore, I dismiss the Tenant's application for an extension of time and the Tenant's application to cancel the Notice will not be heard.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to compensation for unpaid rent?

Background and Evidence

The parties agreed on the following facts:

- This tenancy began in October, 2011.
- Monthly rent is \$450.00, due on the first day of each month.
- A security deposit in the amount of \$225.00 was paid at the beginning of the tenancy.

HS provided the following testimony:

BC did not pay rent when it was due on August 1, 2013, so the Landlord issued the Notice. BC paid \$335.00 on August 16, 2013, and the Landlord provided him with a receipt for "use and occupancy only". The tenancy was not reinstated.

BC has not paid anything towards use and occupancy for September, 2013.

HS asked to apply the security deposit towards partial payment of his monetary award.

BC provided the following testimony:

In July, 2013, BC told the HS he was moving out because of bed bugs. HS told him that he required one month's written notice. The Ministry issued a cheque for \$375.00 on August 10, 2013, because rent for BC's new place was only \$375.00.

BC believes the Ministry has also sent the landlord for the new place a cheque for \$375.00 for the month of September. It takes time to get these things sorted out.

BC submitted that rent has been paid, but to the wrong landlord.

Analysis

This Hearing was challenged by the disruptive behavior of the Tenant. He was very argumentative and had to be cautioned three times about interrupting me and the Landlord's agent.

Section 26 of the Act requires a tenant to pay rent when it is due, whether or not the landlord complies with the Act, unless the tenant has a right under the Act to deduct all or a portion of the rent. In this case, I find that the Tenant had no such right.

I find that the Notice is an effective notice to end the tenancy and that the tenancy ended on August 16, 2013. The Tenant is overholding and I find that the Landlord is entitled to an Order of Possession and compensation for unpaid rent and loss of revenue, as follows:

Unpaid rent for August, 2013	\$450.00
Less amount paid on August 16 for use and occupancy only	<u>-\$375.00</u>
SUBTOTAL	\$75.00
Loss of revenue for September, 2013	<u>\$450.00</u>
TOTAL	\$525.00

Further to the provisions of Section 72 of the Act, the Landlord may apply the security deposit towards partial satisfaction of its monetary award.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the filing fee from the Tenant.

The Landlord's copy of this Decision is accompanied by an Order of Possession and a Monetary Order, calculated as follows:

Monetary award	\$525.00
Recovery of filing fee	<u>\$50.00</u>
SUBTOTAL	\$575.00
Less set off of security deposit	<u>-\$225.00</u>
BALANCE DUE TO LANDLORD	\$350.00

Conclusion

The Tenant's application for an extension of time to file an application to cancel a notice to end tenancy is **dismissed** and therefore his application to cancel the Notice cannot be heard.

The remainder of the Tenant's application is **dismissed with leave to reapply**.

I hereby provide the Landlord with an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord with a Monetary Order in the amount of **\$350.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: September 26, 2013

Residential Tenancy Branch

