



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing was scheduled in response to an application by the landlord for an order of possession / a monetary order as compensation for unpaid rent / and recovery of the filing fee. The landlord attended and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "unclaimed by recipient."

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Both landlords have limited fluency in English, and did not bring an interpreter with them to the hearing.

There is no written tenancy agreement in evidence for this tenancy which has spanned a period of more than 10 years. Monthly rent is due and payable in advance on the first day of each month. Effective August 1, 2013, the monthly rent of \$827.00 was increased by \$20.00 to \$847.00.

Arising from rent which the landlord claims in the application was not paid in full when due on August 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated August 13, 2013. The notice was served by way of posting on the unit door on that same date.

As to what actually transpired with payment of rent for August, it is not clear. The landlord brought copies of 2 receipts issued in exchange for payments of August rent. 1

receipt is dated August 1, 2013 and shows receipt of payment in the amount of \$847.00. A second receipt is dated August 22, 2013 and shows receipt of payment in the amount of \$827.00.

In any event, the landlord testified that all rent has now been paid in full for August, September, October, and even in advance for November 2013. Further, the landlord testified that the principal concern with the tenant is not rent but, rather, the distasteful smell in the unit and excessive storage of miscellaneous possessions which the landlord considers is a fire hazard. The landlord is also concerned that the tenant may have changed the locks on the unit. In summary, the landlord seeks to have the Branch instruct the tenant to remove the excessive possessions and clean the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed at the website: www.rto.gov.bc.ca

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated August 13, 2013. Receipts brought to the hearing by the landlord do not serve to clearly confirm exactly when the tenant made payment(s) for August rent, or in what amount(s). However, all rent is currently paid in full and the tenant did not apply to dispute the notice.

One might speculate that the landlord prepares receipts in advance of actual receipt of payment; this might account for the receipt showing that \$847.00 was received on August 1, 2013.

As to the receipt dated August 22, 2013, one might further speculate that the tenant mistakenly paid the level of rent in effect prior to August 1, 2013, which was \$827.00. And as to the reason for delay in this payment, the landlord testified that the tenant is often away working for days at a time.

Following from all of the above, I find there is insufficient evidence before me that the landlord has established entitlement to an order of possession on the basis of unpaid rent. Further, as rent has been paid in full, I consider the application for a monetary order as compensation for unpaid rent to be withdrawn. In the result, the landlord's application for an order of possession is hereby dismissed, as is the landlord's application for recovery of the filing fee.

Arising from concerns identified by the landlord with regard to this tenancy, the attention of the parties is drawn to section 32 of the Act which addresses **Landlord and tenant obligations to repair and maintain**, in part as follows:

32(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The attention of the parties is also drawn to section 31 of the Act which speaks to **Prohibitions on changes to locks and other access**, in part as follows:

31(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

Finally, the parties are referred to the provisions set out in section 47 of the Act which speaks to **Landlord's notice: cause**.

Both parties have the option of speaking with a Branch Information Officer in order to better understand their rights and obligations under the Act and the Regulation.

Conclusion

The landlord's application is hereby dismissed.

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: October 03, 2013

Residential Tenancy Branch

