



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BONAVIDA MANAGEMENT LTD. & LM
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LANDLORD: MNR, MNSD, OPR, OPC, OPB, FF
TENANT: MT, CNR, CNC, OLC, LRE, SS

Introduction

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

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy, more time to make an application, for the Landlord to comply with the Act, to put restrictions on the Landlord's right of entry to the rental unit and to service the Landlord in an alternative method not stated in the Act.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on September 23, 2013 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by personal delivery to the Landlord's office in the week following September 16, 2013, which was over the 3 day service requirement and not in accordance with section 89 of the Act, but the Landlord agreed with the service of the Tenant's documents and the hearing continued.

Both parties confirmed the receipt of the other parties' hearing package.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Is the Tenant entitled to more time to make the application?
3. Has the Landlord complied with the Act?
4. Should restrictions be placed on the Landlord's right of entry into the rental unit?

Background and Evidence

This tenancy started on July 1, 2013 as a fixed term tenancy with an expiry date of June 30, 2014. Rent is \$980.00 per month payable in advance of the 1st day of each month. The Landlord said there is also a parking charge of \$20.00 per month, but it is not included in the tenancy agreement. The Tenant paid a security deposit of \$490.00 on June 7, 2013.

Both parties agreed there is unpaid rent of \$980.00 for September, 2013 and \$980.00 of unpaid rent for October, 2013.

The Landlord said that the Tenant did not pay rent of \$980.00 for the month of September, 2013, when it was due and as a result, on September 4, 2013, they posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated September 4, 2013 on the door of the Tenant's rental unit. The Landlord continued to say the Tenant and has not paid the rent for September and October, 2013 and the Landlord requested and Order of Possession for as soon as possible.

The Landlord continued to say that they are willing to accept the Tenant's security deposit of \$490.00 as full settlement of the unpaid rent if they are successful in their application for an Order of Possession.

The Tenant said he has not paid the rent for September and October because of issues with the parking space and he was trying to get a roommate to help with the rent expense. The Tenant said the Landlord would not let him have a roommate so he was unable to pay the rent. The Tenant said he would like until the end of November, 2013 to find a new rental unit and if that is not possible he would like 10 days to move out.

The Landlord said they are not will to continue the tenancy to the end of November and the Landlord requested an Order of Possession for as soon as possible.

Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent

I find that the Tenant has not paid the overdue rent and the Tenant does not have the right to withhold a part or all of the unpaid rent. The Tenant's application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent is dismissed without leave to reapply as the Tenant agrees he has unpaid rent for September and October, 2013 in a total amount of \$1,960.00. Consequently, I find for the Landlord and award the Landlord an Order of Possession and a monetary claim for unpaid rent.

I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also order the Landlord to retain the Tenant's security deposit of \$490.00 as full settlement for unpaid rent as requested by the Landlord.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

The Landlord is order to retain the Tenant's security deposit as full settlement of the Tenant's unpaid rent.

The Tenant's application was dismissed without leave to reapply.

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 28, 2013

Residential Tenancy Branch