



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and the tenant.

During the hearing I noted that neither party had provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent relevant to the landlord's Application. Neither party had a copy of the Notice available during the hearing and as such could not provide me with any details as to what the Notice said.

As it was clear from the testimony that the tenant had received the 10 Day Notice and that neither party could testify to the content I adjourned the hearing allowing either or both parties to provide me with a copy of the Notice no later than October 17, 2013.

In addition, I requested the tenant to resubmit his evidence focusing in on details related only to the current tenancy. The tenant's original submission included assertions that the landlord had owed the tenant money from a previous tenancy with the landlord. I advised the parties in the original hearing that I would not consider any issues related to the previous tenancy.

Prior to the close of the original hearing I provided both parties with the date and time of the reconvened hearing as well as the codes required to access the conference call. In addition, the Residential Tenancy Branch provided a written notice of the reconvened hearing to both parties by mail.

The conference call remained open from 9:30 a.m. until 9:53 a.m. and the tenant did not call in during that time. Both landlords attended on time.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from

the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed in the original hearing that the tenancy began on February 1, 2012 as a month to month tenancy for a monthly rent of \$750.00 due on the 1st of each month with no security deposit paid.

The landlord provided into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated August 25, 2013 with an effective vacancy date of September 5, 2013 due to unpaid rent in the amount of \$750.00 due August 1, 2013. The landlord submits the Notice was served to the tenant personally on August 25, 2013.

The tenant acknowledged in his written submission and in his testimony in the original hearing that he had not filed an Application for Dispute Resolution seeking to cancel the Notice.

The landlords testified the tenant failed to pay any rent for the months of January, August, September, and October 2013. The landlords also submit that in February 2013 the tenant only paid \$250.00 towards rent for that month. The landlord seeks \$3,500.00 in unpaid rent.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days 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.

I accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on August 25, 2013 and the effective date of the notice was September 5, 2013. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

While the tenant has provided substantial documentary asserting that the landlord owes him money that should be applied to any rent owed I note that Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

As the tenant did not provide any evidence that he had authority under the *Act* to withhold any monies from his rental payments I find the landlord is entitled the amount of unpaid rent as claimed.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$3,550.00** comprised of \$3,500.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: October 23, 2013

Residential Tenancy Branch

