



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wal-Den Investments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNR, CNC, RP, MT

For the landlord: OPR, OPC, MNR, MNSD, MNDC, MND, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), seeking an order cancelling the landlord’s 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”), for an order granting more time to make an application to cancel a notice to end tenancy, and an order requiring the landlord to make repairs to the rental unit.

The landlord applied for an order of possession for the rental unit due to alleged cause and unpaid rent, a monetary order for money owed or compensation for damage or loss, unpaid rent and alleged damage to the rental unit, for authority to retain the tenant’s security deposit, and for recovery of the filing fee.

The landlord appeared; the tenant did not appear.

The landlord gave evidence that he served the tenant with their Application for Dispute Resolution and Notice of Hearing by leaving it with the tenant personally on October 10, 2013.

The landlord further testified that he served the tenant with their additional documentary evidence by leaving it with the tenant.

I therefore find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the “Act”) and the hearing proceeded on the landlord’s application in the tenant’s absence.

Thereafter the landlord was provided the opportunity to present his evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue #1-Despite having his own application for dispute resolution set for hearing on this date and time, the application of the landlord and the Notice of these Hearings, the tenant did not appear.

Therefore, pursuant to section 10.1 of the Rules, I dismiss the application of the tenant, without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit, for authority to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The landlord gave evidence that this tenancy began on May 1, 2013, that monthly rent is \$780, and that the tenant paid a security deposit of \$390 at the beginning of the tenancy.

The landlord gave evidence that on August 30, 2013, he served the tenant with a 1 Month Notice by leaving it personally with the tenant and a 10 Day Notice, by leaving it personally with the tenant on October 2, 2013, listing unpaid rent of \$780 as of October 1, 2013. The effective vacancy date listed on the 1 Month Notice was September 30, 2013, and October 12, 2013, on the 10 Day Notice.

The 1 Month Notice explained that the tenant had ten (10) days to file an application for dispute resolution at the Residential Tenancy Branch ("RTB") in dispute of the Notice. It also explains that if the tenant did not file an application to dispute the Notice within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

The 10 Day Month Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The tenant did not file his application to dispute the 1 Month Notice within 10 days of receiving it when the application was filed on September 20, 2013.

Additionally, the landlord stated that he has received rent payments on the tenant's behalf since issuance of the 10 Day Notice, in the amount of \$675, leaving a rent deficiency of \$105.

The landlord also gave evidence that the tenant caused such damage to a door in the rental unit, that it was necessary to make emergency repairs. The tenant was billed the full amount, and a portion of the amount owed for the damaged door was paid on the tenant's behalf, leaving a deficiency for repairs to the rental unit in the amount of \$225.81, for which the landlord is requesting monetary compensation.

The landlord's relevant documentary evidence included a copy of the written tenancy agreement, a copy of the Notices, and a copy of the invoice for door repair.

I note that the tenant applied to dispute the Notice; however the tenant failed to appear at this hearing in order to prove that she did not owe the amount listed on the Notice.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or appear at the hearing in support of his application, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

I also accept that the tenant owes unpaid rent through the month of October, in the amount of \$105.

I also accept the undisputed evidence of the landlord that the tenant damaged the door to the extent that the door had to have emergency repairs, and that the tenant was responsible for its repair.

I allow the landlord's monetary claim for the amount of \$225.81.

I therefore find that the landlord is entitled to a monetary award in the amount of \$380.81, comprised of outstanding rent of \$105 through October, 2013, a door repair in the amount of \$225.81, and the \$50 filing fee paid by the landlord for this application.

Conclusion

The tenant's application is dismissed.

The landlord's application is granted.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

At the landlord's request, I allow the landlord to retain \$380.81 from the tenant's security deposit of \$390 in satisfaction of their monetary award

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 30, 2013

Residential Tenancy Branch

