



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR, FF

For the landlord: MNR, OPR, MNDC, MNSD

Introduction

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

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) and to recover the filing fee.

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

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence of the parties 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-Both parties represented that they had not received the other’s application for dispute resolution or Notice of Hearing and were therefore unaware that the other also had their application scheduled for this date.

The landlord presented that he had served the tenant with the Notice of hearing via registered mail; however, despite a reminder to the tenant, he failed to collect the mail.

The tenant did not provide when or how he delivered his application for dispute resolution and Notice of Hearing to the landlord.

I have made the decision to proceed with the hearing, as the issues contained in both applications were related to the same 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, whether it should be upheld or cancelled.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice and to recover the filing fee?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

Background and Evidence

The landlord provided undisputed evidence and a tenancy agreement showing that this tenancy began in March 2012, monthly rent is \$650 payable on the first day of the month, and the tenant paid a security deposit of \$325 at the beginning of the tenancy.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord stated that he served the tenant with a 10 Day Notices to End Tenancy for Unpaid Rent on August 16, 2013, by leaving it with the tenant, listing unpaid rent of \$600 as of August 1, 2013. The effective move-out date listed was August 26, 2013.

The landlord asserted that the tenant has not made a rent payment since issuance of the Notice and owes the amount of \$1900 in total unpaid rent for August, September and October, which is the amount of their monetary claim listed in their application.

In response, the tenant claimed that he did pay rent for August; however the landlord did not provide him with a receipt. The tenant further acknowledged that he had not paid rent for September or October.

In response to my question, the tenant had no independent proof that he had attempted or did pay for August, such as with a bank withdrawal.

In response, the landlord said that the tenant pays rent in cash, and is issued a receipt for each payment. The landlord contended that as the tenant paid no rent in August, there was no receipt issued.

Analysis

Landlord's Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice within five days; however when a Notice is disputed, the tenant must be able to demonstrate that he did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, I am satisfied that the tenant owed the landlord rent when the Notice was issued and that he did not pay all or any of the rent owed to the landlord within five days of receiving the Notice as the tenant failed to convince me he paid rent for August.

Therefore, I find the tenancy has ended due to the tenant's failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenant.

I find the landlord submitted sufficient evidence that the tenant owes the amount of \$600 for unpaid rent for August and \$650 for unpaid rent for each September and October 2013.

I therefore find that the landlord is entitled to a monetary award of \$1900.

Tenant's application:

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the Notice to End Tenancy issued is valid and enforceable. As I have dismissed the tenant's application, I dismiss his request to recover the filing fee.

Conclusion

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 it has been served upon him, this 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.

As the landlord's request, I allow them to retain the tenant's security deposit of \$325 in partial satisfaction of their monetary award of \$1900, and I grant the landlord a final, legally binding monetary order for the balance due pursuant to section 67 of the Act for the amount of \$1575, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after the order has been served upon him, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

The tenant's application is 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 02, 2013

Residential Tenancy Branch

