



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC Housing Management Commission
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MND, FF, O, OLC, AAT, OPT

Introduction:

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit; to recover the fee for filing an Application for Dispute Resolution, and for “other”. It is readily apparent from the Application for Dispute Resolution that the Landlord is requesting an Order of Possession on the basis of a mutual agreement to end the tenancy.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for an Order of Possession for the rental unit; for an order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and for an order providing access to the rental unit for the Tenant and/or his guests.

The Property Manager stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant at the rental unit, via registered mail, on November 06, 2013. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

Preliminary Matter

I find that the Tenant failed to diligently pursue his Application for Dispute Resolution, as he did not appear at the hearing in support of his Application. I therefore dismiss the Tenant’s Application for Dispute Resolution, without leave to reapply.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent and/or damages?

Background and Evidence:

The Property Manager stated that this tenancy began on November 01, 2010; that the Tenant agreed to pay monthly rent of \$328.00 by the first day of each month; that the Tenant did not pay any rent for November of 2013; and that the Tenant has not yet vacated the rental unit. The Landlord is seeking \$328.00 in rent for November.

The Property Manager stated that the Landlord and the Tenant mutually agreed to end the tenancy on October 31, 2013. A copy of a signed Mutual Agreement to End Tenancy was submitted in evidence. The Landlord is seeking an Order of Possession for the rental unit, on the basis of this mutual agreement to end the tenancy.

The Landlord is seeking compensation, in the amount of \$230.95, for repairing the front door to the residential complex. The Property Manager stated that the front door was broken by a female who was arguing with the Tenant.

The Building Manager stated that he did not witness the incident but the incident was recorded by a surveillance camera, and that he has viewed that recording. The Building Manager contends that the damage would not have occurred if the Tenant had not held the door open and argued with the female. A copy of the video recording, with no audio, was submitted in evidence.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$328.00 by the first day of each month and that he has paid no rent for November of 2013. As the Tenant has not yet vacated the rental unit I find that he is obligated to pay \$328.00 in rent for the month of November.

On the basis of the undisputed evidence, I find that the Landlord and the Tenant mutually agreed that this tenancy would end on October 31, 2013. As the Tenant has not yet vacated the rental unit, I find that the Landlord is entitled to an Order of Possession, pursuant to section 55(2)(d) of the *Act*.

Section 32(3) of the *Act* requires tenants to repair damage that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant. I find that the Landlord has submitted insufficient evidence to establish that the woman who broke the front door of the residential complex was permitted on the property by the Tenant. In reaching this conclusion I was heavily influenced by the video recording submitted in evidence.

In my view, the video clearly shows that the Tenant is attempting to prevent the female from entering the residential complex. The Tenant pushes the female away from the door and he closes the door behind him, at which point the female kicks the door two times. On the basis of this video, I cannot conclude that the female was permitted on

the property by the Tenant. As the female was not permitted on the property by the Tenant at the time of this incident, I find that he is not obligated to repair the damage caused by this female during the altercation. I therefore dismiss the Landlord's claim for compensation for repairing the door that was broken by this female.

I agree with the Building Manager's submission that the damage may not have occurred if the Tenant had simply closed the door without waiting to argue with the female, however I find that the submission is not relevant. The *Act* does not require the Tenant to protect the Landlord's property from people he has not invited to the residential complex and it is the female who caused the damage who is liable for the repairs.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$378.00, which is comprised of \$328.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution and I grant the Landlord a monetary Order for this amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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: November 27, 2013

Residential Tenancy Branch

