



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR MNSD MNDC FF

For the tenant: MT CNR MNR MNDC MNSD OLC PSF LRE 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 landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenant applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), for more time to allow a tenant to make an application to cancel a Notice to End Tenancy, for an order to suspend or set conditions on the landlord’s right to enter the rental unit, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the cost of emergency repairs, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to provide services or facilities required by law.

The landlord, the spouse of the landlord, an agent/interpreter for the landlord, the tenant and an agent/interpreter for the tenant attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The tenant confirmed that she received the landlord's evidence and had the opportunity to review the landlord's evidence prior to the hearing. The tenant stated that she served evidence on November 27, 2013; however, this Arbitrator did not have evidence from the tenant with the tenant's application. As a result, I find that the tenant did not serve evidence in accordance with the rules of procedure and as a result, any evidence from the tenant has been excluded from this proceeding.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In the matter before me, the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to cancel the Notice to End Tenancy. I find that not all the claims in the tenant's Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the Notice to End Tenancy, the tenant's request for more time to make an application to cancel a Notice to End Tenancy, and the tenant's application to recover the filing fee at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply. As this matter consists of a cross-application by the landlord, the landlord's application is also being considered.

Issues to be Decided

- Should the Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

The tenancy agreement submitted in evidence by the landlord indicates that a fixed term tenancy began on March 1, 2012 and reverted to a month to month tenancy after February 28, 2013 as the tenant did not sign the portion of the tenancy agreement that requires that the tenant vacate the rental unit as of February 28, 2013. The tenant

stated that the tenancy agreement submitted by the landlord had been altered and was a month to month tenancy agreement from the start of the tenancy, and not a fixed term originally. The parties agreed that monthly rent in the amount of \$650.00 is due on the first day of each month. The parties also agreed that the tenant paid a security deposit of \$325.00 at the start of the tenancy, which the landlord continues to hold.

The landlords are seeking unpaid rent of \$4,550.00 as follows:

1. Unpaid rent for May 2013	\$650.00
2. Unpaid rent for June 2013	\$650.00
3. Unpaid rent for July 2013	\$650.00
4. Unpaid rent for August 2013	\$650.00
5. Unpaid rent for September 2013	\$650.00
6. Unpaid rent for October 2013	\$650.00
7. Unpaid rent for November 2013	\$650.00
TOTAL	\$4,550.00

The tenant was unable to confirm when she received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") from the landlord which was dated October 16, 2013. The 10 Day Notice states that \$3,900.00 in unpaid rent was due as of October 2, 2013. The landlord is also seeking unpaid rent for November 2013 as the tenant has failed to pay November 2013 rent since the landlord filed their application on October 25, 2013 and the tenant continues to occupy the rental unit. The effective vacancy date listed on the 10 Day Notice is October 30, 2013.

During the hearing the tenant confirmed that April 2013 rent was paid to a friend of the landlord, LS, in cash which the landlord confirmed. The tenant stated that rent for the months of May, June, July, August, September, October and November 2013 have not been paid as the landlords were out of the country. The landlord stated that they had a verbal agreement with the tenant for the tenant to pay monthly rent to their agent and friend, LS. The tenant stated that the only contact information they had for LS, was a phone number and the tenant confirmed that she did not attempt to call LS to pay rent between for the months being claimed by the landlord. The tenant stated that LS was not a power of attorney for the landlord.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I will deal with the length of the tenancy agreement. As the tenant did not sign the portion of the tenancy agreement that requires that the tenant vacate the rental unit as of February 28, 2013 in the tenancy agreement submitted in evidence by the landlord, I find that the tenancy agreement was a month to month tenancy agreement after February 28, 2013. I find that the tenant provided insufficient evidence to prove that the tenancy agreement began as a month to month tenancy agreement.

10 Day Notice – The landlord issued a 10 Day Notice dated October 16, 2013 for \$3,900.00 in unpaid rent due as of October 2, 2013, which was posted to the door of the rental unit. The tenant could not recall the date she received the 10 Day Notice. Section 90 of the *Act* states that documents served by posting to the door are deemed served three days after they are posted. As a result, I find the 10 Day Notice was deemed served by October 19, 2013. The tenant did not dispute the 10 Day Notice until October 25, 2013 which is outside of the five day timeline provided under section 46 of the *Act*. Furthermore, the tenant did not provide a reason as to why she did not dispute the 10 Day Notice as provided under section 46 of the *Act*.

I find that the 10 Day Notice is valid as the tenant confirmed that rent was not paid for May, June, July, August, September, October or November of 2013. I do not accept the tenant's argument that she was unable to pay the rent as the landlord's were out of the country as the tenant confirmed that she paid April 2013 rent to a landlord agent, LS and confirmed that she had the phone number for LS and did not attempt to contact LS by phone after April 2013. I find the tenant's argument that the landlord agent LS did not have power of attorney to be irrelevant as an agent does not require a power of attorney to act as an agent under the *Act*. In addition, **I find** that the tenant failed to dispute the 10 Day Notice within the five day timeline pursuant to section 46 of the *Act*, and provided insufficient evidence to support her application for an extension of time to dispute the 10 Day Notice. Therefore, **I find** that the tenant is conclusively presumed under section 46 of the *Act* to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice which was October 30, 2013.

Therefore, **I dismiss** the tenant's application to cancel the 10 Day Notice and **I uphold** the 10 Day Notice issued by the landlord which had an effective vacancy date of October 30, 2013 as it is valid. **I grant** the landlord an order of possession for unpaid rent **effective two (2) days after service on the tenant**. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

Landlord's claim for unpaid rent – There is no dispute that the tenant has not paid rent for May, June, July, August, September, October or November of 2013 for a total of unpaid rent of \$4,550.00. Section 26 of the *Act* requires that a tenant pay rent on the day that it is due in accordance with the tenancy agreement. **I find** that the tenant breached section 26 of the *Act* by failing to pay rent between May 2013 and November 2013, inclusive. Therefore, **I find** the landlord has met the burden of proof and is entitled to monetary compensation of **\$4,550.00** in unpaid rent as claimed.

As the landlord's claim had merit, **I grant** the landlord the recovery of their filing fee in the amount of **\$50.00**.

As the portion of the tenant's claim that was considered at this proceeding has been dismissed, **I do not** grant the tenant the recovery of her filing fee.

I find that the landlord has established a total monetary claim of **\$4,600.00** comprised of \$4,550.00 in unpaid rent, plus the \$50.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit which the landlord continues to hold in the amount of \$325.00 which has accrued \$0.00 in interest to date. **I authorize** the landlord to retain the tenant's full security deposit of \$325.00 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord by the tenant in the amount of **\$4,275.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$4,600.00 comprised of \$4,550.00 in unpaid rent, plus the \$50.00 filing fee. The landlord has been authorized to retain the tenant's full security deposit of \$325.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord by the tenant in the amount of \$4,275.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 29, 2013

Residential Tenancy Branch

