



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlords' application filed December 24, 2013: OPR; MNR; MNDC; MNSD; FF; O

Tenant's application filed December 24, 2013: CNR; OLC; PSF; LRE; FF

Introduction

This Hearing was convened to consider cross applications. The Landlords seek an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks to cancel the Notice to End Tenancy for Unpaid Rent; an Order that the Landlords comply with the Act, regulation or tenancy agreement; an Order that the Landlords provide services and facilities required by law; an Order suspending or setting conditions on the Landlords' right to enter the rental unit; and to recover the cost of the filing fee from the Landlords.

The Landlord agent and the Tenant gave affirmed testimony at the Hearing.

It was determined that the parties exchanged their Notice of Hearing documents at the Residential Tenancy Office in Burnaby on December 24, 2013.

Both parties provided documentary evidence. The Tenant provided his documentary evidence, together with digital evidence, to the Residential Tenancy Branch on January 6, 2014. I received the digital evidence 20 minutes before the Hearing and was able to open the CD that was provided, but could not run the two movies. The Tenant stated that he provided the Landlords with the documentary and digital evidence on January 7, 2014, by handing the evidence to the Landlords.

The Landlords provided their documentary evidence to the Residential Tenancy Branch on January 2, 2014. They served the Tenant with the documents by posting them to his door on January 7, 2014. The Landlord HB testified that the Tenant was evading service and that they could not serve him with the documents until they saw him on January 7, 2014.

Issues to be Decided

- Should the Notice to End Tenancy issued December 15, 2013 (the “Notice”), be cancelled or upheld?
- Are the Landlords entitled to an Order of Possession and a monetary award for unpaid rent and loss of revenue?
- Is the Tenant entitled to the Orders sought?

Background and Evidence

The rental unit is the basement suite of a house. The Landlords live in the suite above the Tenant. This tenancy began on July 17, 2012. Monthly rent is \$450.00, due the first day of each month. The Tenant paid a security deposit in the amount of \$225.00 on July 17, 2012.

The Landlord HB (“HB”) testified that the Tenant did not pay rent for the months of November and December, 2013. She stated that she issued the Notice on December 15, 2013, and served the Tenant with the Notice by attaching it to his door on December 15, 2013.

The Tenant (“CM”) stated that he did not receive the Notice until “December 20 or 21”. He denied being in arrears of rent for November. CM stated that he was late paying rent in November, but that he paid the rent in full, in cash, on or about November 15, 2013. The Tenant acknowledged that he has not paid any rent for the months of December, 2013 or January, 2014. He stated that he did not pay rent because the Landlords cut off the internet and cable to the suite on December 17, 2013, and entered his suite illegally.

HB denied receiving any rent for November. She stated that the Tenant normally pays monthly rent in cash but that she did not give him receipts because he didn’t want receipts.

Analysis

Section 26 of the Act requires a tenant to pay rent when it is due, whether or not the landlord complies with the Act, regulation or tenancy agreement, unless the tenant has a right under the Act to withhold all or a part of the rent. In this case, the Tenant has no order from the Director allowing him to withhold rent. I explained to the Tenant that his remedy would have been to file an Application for Dispute Resolution seeking compensation and orders. Based on the testimony of both parties, I find that the Tenant did not pay rent for the month of December, 2013.

I also explained to the Tenant that Section 90 of the Act deems service of documents by posting on a door to be effective 3 days after posting the document, in this case, December 18, 2013. An application to cancel a notice to end tenancy for unpaid rent must be made within 5 days after receipt of the notice, in this case by December 23, 2013. The Tenant filed his Application on December 24, 2013 and did not include a request for a time extension to file his application to cancel the Notice. He was vague about his reason for not seeing the Notice until "December 20 or 21", but in any event the Tenant is in arrears and I find that the Notice is a valid notice to end the tenancy. I find that the tenancy ended on December 28, 2013 and that the Tenant is overholding. The Tenant's application to cancel the Notice is dismissed.

The tenancy is over and therefore I dismiss the remainder of the Tenant's application without leave to re-apply. I explained to the Tenant that he was at liberty to file another application if he believes he is entitled to compensation.

The Tenant has not been successful in his application and I find that he is not entitled to recover the cost of the filing fee from the Landlords.

I find that the Landlords are entitled to an Order of Possession for unpaid rent. The Tenant denies that he owes any rent for November, 2013. The Landlord did not provide sufficient evidence to prove that the Tenant did not pay rent (for example, a copy of the tenant ledger or receipts for rent paid in cash in previous months). Therefore, I allow the Landlords' claim for unpaid rent for December, 2013 and loss of revenue for the month of January, 2014. The Landlords' claim for unpaid rent for November is dismissed.

Pursuant to the provisions of Section 72 of the Act, the Landlords may apply the security deposit in partial satisfaction of their monetary award.

The Landlords have been successful in their application and I find that they are entitled to recover the cost of the filing fee from the Tenant.

I hereby provide the Landlords with a Monetary Order, calculated as follows:

Unpaid rent for December, 2013	\$450.00
Loss of revenue for January, 2014	\$450.00
Recovery of filing fee	\$50.00
Less security deposit held by Landlord	<u>-\$225.00</u>
Total	\$725.00

Conclusion

The Tenant's application is dismissed in its entirety.

I hereby provide the Landlords with an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlords with a Monetary Order in the amount of **\$725.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 08, 2014

Residential Tenancy Branch

