



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal Alexander Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, OPC, CNR, MT, RP, O, MNR, MNSD, MNDC, FF

Introduction:

This hearing was convened in response to cross applications.

On January 08, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, an Order of Possession for Cause, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that the Landlord's Application for Dispute Resolution and documents the Landlord wishes to rely upon as evidence at this hearing were served to the Tenant, via registered mail, on January 10, 2014. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On December 27, 2013 the Tenant filed an Application for Dispute Resolution, in which the Tenant initially applied for more time to apply to cancel a Notice to End Tenancy, for an Order requiring the Landlord to make repairs, and for "other".

The Tenant initially stated that the Tenant's original Application for Dispute Resolution was delivered to the Agent for the Landlord's door on December 12, 2013. After being advised that he could not have delivered the Application for Dispute Resolution on that date, the Tenant stated he cannot recall when the original Application for Dispute Resolution was delivered to the Landlord's door. The Landlord acknowledged receipt of the Tenant's original Application for Dispute Resolution.

On January 02, 2014 the Tenant submitted an amended Application for Dispute Resolution to the Residential Tenancy Branch, in which he added an application to set aside a Notice to End Tenancy for Unpaid Rent. The Tenant cannot recall when this amended Application for Dispute Resolution was served to the Landlord.

On January 14, 2014 the Tenant submitted another amended Application for Dispute Resolution to the Residential Tenancy Branch, in which he added an application to set

aside a Notice to End Tenancy for Cause. The Tenant stated that he personally served this amended Application for Dispute Resolution to the Agent for the Landlord on February 13, 2014. The Landlord acknowledged receipt of the Tenant's amended Application for Dispute Resolution on February 13, 2014.

During the hearing the Tenant withdrew his application for an Order requiring the Landlord to make repairs, as the bedroom light he wanted fixed has been repaired.

The Tenant submitted documents to the Residential Tenancy Branch on January 08, 2014. He stated that he placed copies of these documents through the Agent for the Landlord's mail slot on January 08, 2014. The Agent for the Landlord denied receipt of these documents. As the Landlord has not acknowledged receipt of these documents and the Tenant has submitted no evidence to corroborate his testimony that they were delivered to the Agent for the Landlord's mail slot, they were not accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch on January 14, 2014. He stated that he placed copies of these documents through the Agent for the Landlord's mail slot on January 14, 2014. The Agent for the Landlord denied receipt of these documents. As the Landlord has not acknowledged receipt of these documents and the Tenant has submitted no evidence to corroborate his testimony that they were delivered to the Agent for the Landlord's mail slot, they were not accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch on February 13, 2014. He stated that he placed copies of these documents through the Agent for the Landlord's mail slot on February 13, 2014. The Landlord stated that these documents were personally served on February 13, 2014, and were not delivered to the mail box. As the Landlord has acknowledged receipt of these documents they were accepted as evidence for these proceedings.

I note that excluding the Tenant's evidence that was submitted on January 08, 2014 is not prejudicial to the Tenant, as that evidence was duplicated, with the exception of the second page of the Ten Day Notice to End Tenancy, in the evidence that was served to the Landlord on February 13, 2014. I note that the second page of the Ten Day Notice to End Tenancy was considered at the hearing, as it was submitted in evidence by the Landlord.

I note that excluding the Tenant's evidence that was submitted on January 14, 2014 is not prejudicial to the Tenant, as that evidence was duplicated, with the exception of the second page of the One Month Notice to End Tenancy and a letter from the Agent for the Landlord, dated December 17, 2013, in the evidence that was served to the Landlord on February 13, 2014. I note that the second page of the One Month Notice to End Tenancy and the letter from the Agent for the Landlord, dated December 17, 2013, was available to me at the hearing, as they were submitted in evidence by the Landlord.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

I note that the Tenant repeatedly interrupted the hearing by speaking out of turn. At one point he was paced in "mute mode" for a period of approximately two minutes, during which time he could hear the conversation but could not participate in it. The Tenant did not disrupt the hearing after being removed from "mute mode".

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession, to a monetary Order for unpaid rent/lost revenue, and to keep all or part of the security deposit?

Should the Notice to End Tenancy for Cause and/or the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on October 01, 2013; that the Tenant agreed to pay monthly rent of \$800.00 by the first day of each month; and that the Tenant paid a security deposit of \$400.00.

The Landlord and the Tenant agree that the Tenant did not pay rent for January or February of 2014. When asked if he had a legal right to withhold rent, the Tenant stated that he understood that he did not have to pay rent until this hearing had been concluded. The Tenant further stated that he withheld rent for January and February because he believed the Ten Day Notice to End Tenancy was not valid, as it was served after the One Month Notice to End Tenancy.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent, dated January 02, 2014, was personally served to the Tenant on January 02, 2014. The Notice declared that the Tenant must vacate the rental unit by January 13, 2014.

The Agent for the Landlord stated that he is seeking a possession date of February 28, 2014, providing the Tenant is ordered to pay rent for February of 2013.

Analysis

On the basis of the undisputed evidence, I find that the Tenant has not paid any of the \$800.00 in rent that was due on January 01, 2014. Section 26(1) of the *Residential Tenancy Act (Act)* requires tenants to pay rent when it is due, whether or not the landlord complies with the Act or the tenancy agreement. As he is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$800.00 in outstanding rent for January of 2014.

I specifically note that there is nothing in the *Act* that allows a tenant to withhold rent because the tenant believes the landlord has served an invalid Notice to End Tenancy nor is there anything in the *Act* that allows a tenant to withhold rent pending the outcome of a dispute resolution proceeding.

Section 46 of the *Act* permits a landlord to end a tenancy for unpaid rent on any date after the rent is due, by serving a Ten Day Notice to End Tenancy. On the basis of the undisputed evidence, I find that on January 02, 2014 the Landlord personally served the Tenant with a Ten Day Notice to End Tenancy, which declared that the Tenant must vacate the rental unit by January 13, 2014.

As the Landlord had grounds to serve a Ten Day Notice to End Tenancy and the Tenant did not pay the outstanding rent within five days of receiving the Ten Day Notice to End Tenancy, I find that this tenancy is ending in accordance with the Ten Day Notice to End Tenancy that was served. I therefore dismiss the Tenant's application to set aside a Notice to End Tenancy for Unpaid Rent and I grant the Landlord an Order of Possession that is effective on February 28, 2014.

As the Tenant is being permitted to remain in the rental unit for the entire month of February, I find that he must pay \$800.00 in rent for February of 2014.

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.

Supplementary Matter

After hearing the testimony regarding unpaid rent and the Ten Day Notice to End Tenancy for Unpaid Rent, I concluded that this tenancy was ending pursuant to section 46 of the *Act* and that the Landlord was being granted an Order of Possession on the strength of the Ten Day Notice to End Tenancy for Unpaid Rent.

The parties were advised that the tenancy was ending in accordance with section 46 of the *Act* and that there was, therefore, no need to consider whether the tenancy should

also be ended in accordance with section 47 of the *Act*. The Landlord did not argue with this position however the Tenant was strongly opposed.

The Tenant argued that he has not been given the opportunity to present evidence regarding the One Month Notice to End Tenancy. He was advised that the One Month Notice to End Tenancy is a moot point, as the tenancy is ending on the basis of unpaid rent. He was given a second opportunity to provide evidence regarding the payment of rent and the Ten Day Notice to End Tenancy, at which time no additional evidence regarding that matter was provided.

I note that I have thoroughly reviewed all of the documents served in evidence by the Tenant and none of them would cause me to reconsider my decision to end this tenancy in accordance with section 46 of the *Act*.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on February 28, 2014. 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 \$1,650.00, which is comprised of \$1,600.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$400.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,250.00. 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: February 17, 2014

Residential Tenancy Branch

