



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord gave sworn testimony supported by written evidence that she sent the tenant a copy of her dispute resolution hearing package on January 16, 2014. She entered into written evidence a copy of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. Although the tenant confirmed that he did receive the landlord's hearing package, he said he had vacated the rental unit on or about January 5, 2014, when he surrendered his keys to the landlord and the landlord locked him out of the rental unit. He testified that he had been forced to leave and had left his furniture, belongings and cat in the rental unit. He said that on January 25, 2014, he was handed the landlord's dispute resolution hearing package by the police who he asked to attend the rental unit with him to try to retrieve his cat and his belongings. He testified that the landlord had entered the rental unit (allegedly without his permission) and allowed his cat to escape. He said that he was only allowed to remove one box/bag of personal possessions with him when he attended rental unit on January 25, 2014. However he received the landlord's dispute resolution hearing package, I am satisfied that the tenant did receive notice of this hearing and had an adequate opportunity to prepare for this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's dispute resolution hearing package on January 21, 2014, the fifth day after its registered mailing. As noted, the tenant admitted that he received this package on January 25, 2014.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

Although the parties agreed on little with respect to how or even if this tenancy has ended, they did agree that the tenancy began on the basis of an oral agreement on June 1, 2013. Monthly rent for this periodic tenancy was set at \$700.00 per month, payable on the first. The landlord continues to hold the tenant's \$350.00 security deposit paid on June 1, 2013.

I heard sworn testimony and reviewed written evidence to confirm that two notices to end this tenancy have been issued with respect to this tenancy. The tenant confirmed that the tenant's social worker and Team Leader with the Ministry of Children and Family Development's Aboriginal Child and Family Services section (the Ministry) sent a December 16, 2013 letter on the tenant's behalf advising the landlord that the tenant planned to vacate the rental unit by December 31, 2013 "unless other arrangements are made between yourself and (the tenant)." In that letter, the Ministry also noted that it would be discontinuing making monthly shelter payments to the landlord of \$700.00. The tenant testified that he made additional oral arrangements with the landlord to continue this oral tenancy agreement beyond December 31, 2013. The landlord testified that no such oral arrangements were made to continue this tenancy beyond December 31, 2013.

The landlord entered sworn testimony and written evidence that on December 31, 2013, she issued a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which she subsequently served to the tenant by posting it on his door on January 2, 2014. She entered into written evidence a signed statement by a witness who saw her post this 10 Day Notice on the tenant's door at 10:00 a.m. on January 2, 2014.

The tenant said that he never received the landlord's 10 Day Notice. He testified that the landlord unexpectedly locked him out of the rental unit on January 5, 2014, and he surrendered all of his keys to her at that time. However, he maintained that since then he has been residing in the rental unit beside the one where he was previously residing, presumably with another tenant. The landlord lives in the rental unit on the opposite side of the rental unit where he was previously residing.

The landlord asked for an Order of Possession because she maintained that the tenant had not yielded vacant possession of the premises, as many of his belongings remain there. She also applied for a monetary award of \$1,400.00, as she gave undisputed sworn testimony and written evidence that the tenant has failed to pay rent for January and February 2014. Although she testified that the tenant had not returned his keys to her, she did not dispute the tenant's claim that the only way he could obtain limited

access to the rental unit on January 25, 2014 was with the accompaniment of the police.

Initially, the landlord testified that she has not accessed the tenant's rental unit since he apparently stopped coming to the rental unit early in January. However, when challenged by the tenant as to her testimony, particularly with respect to her responsibility for letting the tenant's cat out of the rental unit, she revised her earlier testimony. She testified that she was awakened one night by sounds coming from the tenant's rental unit, and unlocked and opened his door to check on the tenant's cat. She testified that the tenant's cat rushed for the door and left the rental unit. Although she said that she chased after the cat and has looked for it, the cat has not returned and remains missing.

The tenant's sworn testimony also changed during the course of this hearing. Early in the hearing, he testified that the landlord has discarded his belongings and thrown them out. Later in the hearing, he revised this testimony when he said that he believed that his couch, furniture and other belongings may very well still be in the rental unit. He said that he plans to submit his own application for dispute resolution regarding the circumstances surrounding the end of this tenancy and the landlord's alleged lack of care regarding possessions of value, including his still missing cat, that he claimed have gone missing as a result of the landlord's actions.

Analysis

Although the parties disagreed with almost everything associated with the latter stages of this tenancy, the only issues I can consider are those directly related to the items noted in the landlord's application for dispute resolution.

I should first note that the *Act* requires that a landlord prepare a written residential tenancy agreement for any tenancy. In this case, the landlord never prepared such an agreement. The absence of a written agreement also adds to the confusion created by the December 16, 2013 notice submitted to the landlord on the tenant's behalf. It becomes uncertain as to whether arrangements truly were made between the landlord and the tenant to continue this tenancy beyond December 31, 2013. Without a written tenancy agreement, there is little to rely upon when there is disagreement on whether additional arrangements were made in late December 2013.

Whether or not additional oral arrangements were made between the parties following the landlord's receipt of the December 16, 2013 notice, the landlord had no legal authority to act on an eviction of the tenant on December 31, 2013, without first obtaining legal authorization by way of an Order of Possession from an Arbitrator appointed under the *Act*. There is a process for taking action against a tenant who refuses to abide by the terms of his written notice to end a tenancy. That process was not initiated by the landlord in this case.

In her 10 Day Notice, the landlord identified \$700.00 as owing on December 31, 2013. On that date, the same date that the landlord signed this Notice, I find that no rent was

in fact owing. The tenant's regular monthly rent would only have become owing on January 1, 2014, and the tenant would have had that entire day to pay his January 2014, without falling into arrears. While the landlord may have received payments earlier than January 1, 2014 in the past from the Ministry and may have reasonably anticipated that no rent would be paid on January 1, 2014, she could not be certain of that. I find that the landlord could not issue a 10 Day Notice for rent which was not yet owing. Her delay in actually serving the 10 Day Notice to the tenant until January 2, 2014 does not negate the deficiencies in the landlord's 10 Day Notice.

Under these circumstances, I would not find that the 10 Day Notice was correct, nor could I issue an Order of Possession on that basis. However, the tenant has not disputed the landlord's request for the issuance of an Order of Possession. In fact, he maintained that this tenancy ended on January 5, 2014, when he claimed to have surrendered his keys and yielded possession of the rental unit to the landlord. While he claimed to have been "locked out" of his rental unit by the landlord, he also stated that he surrendered his keys to the landlord on January 5, 2014, an act that would normally equate to ending his tenancy, likely in accordance with the December 16, 2013 notice given to the landlord on his behalf. The landlord did not claim that the tenant has been returning to the rental unit and did not dispute the tenant's assertion that the only time he was able to re-enter the premises for over a month was when he did so accompanied by police on January 25, 2014.

At the hearing, one of the chief issues surrounding this tenancy was the tenant's request that he be allowed to attend the rental unit to retrieve any of his possessions of value that may still be there. After considerable discussion, the landlord agreed to meet with the tenant at 2:00 p.m. on February 16, 2014, to enable the tenant to remove any possessions that he may wish to remove from the rental unit. At the hearing, I ordered the landlord to be available at the rental unit at 2:00 p.m. on February 16, 2014, for the purposes of allowing the tenant to remove any of his possessions that he wishes to retain. For that reason, I issue an Order of Possession in the landlord's favour to take effect once the February 16, 2014 opportunity to remove items has been completed. To give the tenant an opportunity to remove his belongings, I make the Order of Possession effective by 7:00 p.m. on February 16, 2014.

Turning to the landlord's claim for a monetary award, I find that this tenancy ended on the basis of the notice to end this tenancy issued on the tenant's behalf on December 16, 2013. However, the tenant's failure to abide by the terms of that December 16, 2013 did not enable the landlord to end the tenancy without the tenant's agreement. In this situation and on a balance of probabilities, I find that the tenant ended this tenancy when he returned his keys to the landlord on January 5, 2014.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any

responsibility for rent for January 2014, the tenant would have needed to provide his notice to end this tenancy in writing before December 1, 2013.

There is undisputed evidence that the tenant did not pay any rent for January 2014. On the basis of the tenant's testimony that he surrendered his keys on January 5, 2014, I find that the tenant remained responsible for paying monthly rent to the landlord for January 2014, due to his failure to abide by the provisions of section 45(1) of the *Act*. The tenant's failure to remove his belongings from the rental unit for the month of January made it difficult for the landlord to re-rent the premises for that month. Under these circumstances, I allow the landlord a monetary award of \$700.00 due to the insufficient termination notice provided to the landlord by the tenant and his representatives on the tenant's behalf.

Section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. In this case, I find that the tenant no longer had possession of the rental unit as of early 2014, although his belongings remained there. The landlord did not take adequate steps to try to mitigate any additional losses for February 2014. I dismiss the landlord's application for a monetary award for unpaid rent or loss of rent for February 2014 without leave to reapply.

As the landlord has been partially successful in her application, I allow her to recover one-half of her \$50.00 filing fee. I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

Conclusion

I order the landlord to allow the tenant access to the rental unit commencing at 2:00 p.m. on February 16, 2014, for the purpose of removing any possessions of his that he would like to retain. This opportunity ends by 7:00 p.m. on February 16, 2014, by which time I am providing the landlord with a formal copy of an Order of Possession. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and part of her filing fee and to retain the tenant's security deposit:

Item	Amount
Unpaid January 2014 Rent	\$700.00
Less Security Deposit	-350.00
Recovery of Partial Filing Fee for this Application	25.00
Total Monetary Order	\$375.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 14, 2014

Residential Tenancy Branch

