



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 353806 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; and, authorization to keep the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing the landlord requested the monetary claim be amended to include loss of rent for February and March 2014 since the tenant is still residing in the rental unit. The tenant was prepared to respond to this request and as such, I permitted the application to be amended.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to recover unpaid and/or loss of rent in the amount claimed?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced April 1, 2013 and the tenant paid a security deposit of \$400.00. The tenant is required to pay rent of \$800.00 on the 1st day of every month. It was undisputed that as of January 1, 2014 the tenant owed rental arrears of \$4,300.00. On January 10, 2014 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates the tenant owed \$4,300.00 in rent as of January 1, 2014 and has a stated effective date of January 20, 2014. It was undisputed that the tenant did not pay the outstanding rent, did not file to

dispute the Notice, and continues to reside in the rental unit. The tenant testified that he is going to vacate the rental unit in the next couple of days.

The landlord requested an Order of Possession effective two (2) days after service. The landlord also requested a Monetary Order for unpaid rent of \$4,300.00 plus loss of rent for the months of February and March 2014.

The tenant was agreeable to compensating the landlord for loss of rent for February 2014 since he occupied the unit for the entire month but took exception to compensating the landlord for the entire month of March 2014 since the unit cannot be re-rented without an occupancy permit. The landlord acknowledged that the unit was rented to the tenant without an occupancy permit and that occupancy permits are currently pending with the City. The landlord acknowledged that once the tenant vacates the unit cannot be re-rented until the appropriate permits are in place. In light of this discussion, both parties were agreeable to the landlord receiving an award reflecting the tenant's use and occupancy of the unit in March 2014 on a per diem basis with the expected vacancy date being March 7, 2014.

The tenant submitted that he also paid a \$400.00 pet damage deposit. The landlord stated that the documentation he has does not reflect that. I informed the parties that I would make no finding as to whether a pet damage deposit was paid. I encouraged the parties to investigate that matter further and if they are unable to resolve their dispute about a pet damage deposit that may be an issue to be decided under a future Application for Dispute Resolution.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal basis to withhold rent. I was not presented sufficient evidence to suggest the tenant had a legal basis to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord served the tenant with a 10 Day Notice to End Tenancy on January 10, 2014. Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on January 20, 2014. Since the tenancy has ended and the tenant is still occupying the rental unit I find the landlord is entitled to regain possession of the rental unit. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent of \$4,300.00 for months up to and including January 2014. Since the tenant continues to occupy the rental unit and expects to do so for the next couple of days, I further award the landlord compensation for overholding for the period of February 1, 2014 through to March 7, 2014. I calculated the award for overholding to be \$929.03 [\$800.00 for February 2014 plus \$129.03 for March 1 – 7, 2014].

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: up to and including January 2014	\$4,300.00
Overholding: February 1, 2014 – March 7, 2014	929.03
Filing fee	50.00
Less: security deposit	<u>(400.00)</u>
Monetary Order	\$4,879.03

The landlord must serve the Monetary Order upon the tenant and may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit in partial satisfaction of the unpaid rent and has been provided a Monetary Order for the balance of \$4,879.03 to serve and enforce as necessary.

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: March 05, 2014

Residential Tenancy Branch

