Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR MNR

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 27, 2014, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Upon review of the service of documents the Tenant stated that he had not received a copy of the Landlord's written submission that was submitted to the *Residential Tenancy Branch (RTB).* The Landlord confirmed that he had not served the Tenant a copy of this statement.

Section 3.1 of the *Residential Tenancy Branch Rules of Procedure* stipulates how and when an applicant must serve their evidence to the respondent. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the Tenant has not received copies of the Landlords' written submission I find that that evidence cannot be considered in my decision. I did however consider the Landlord's testimony regarding that submission.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced in August 2012. The Tenant is required to pay rent of $850.00 on the first of each month and shortly after August 2012 the Tenant paid $425.00 as the security deposit.

The Landlord testified that when the Tenant accumulated $2,725.00 in unpaid rent he personally served the Tenant a 10 Day Notice on January 05, 2014. Since that date the Tenant has made partial payments as follows:

$350.00 paid January 12, 2014
$900.00 paid January 22, 2014
$300.00 paid March 14, 2014.

The Landlord stated that no payments were received in February 2014. After applying above payments to previous outstanding balance, plus February and March 2014 rent, the Landlord said he calculated that the Tenant now owes him $3,065.00

The Tenant confirmed receipt of the 10 Day Notice as described by the Landlord. He did not dispute the amount of unpaid rent that is owed to the Landlord. He stated that he had agreed to pay the Landlord two large payments over the course of the next couple of months.

In closing, the Landlord asked what the next steps were and how he should proceed. I explained to both parties that once they receive this Decision if they had any questions they should contact the *Residential Tenancy Branch* or an advocate that could provide each them assistance with understanding this Decision and with information on how to move forward.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on January 5, 2014 and the effective date of the Notice is January 15, 2014.

The Tenant neither paid the rent in full nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **January 15, 2014,** and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act.* Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of $2,725.00 that was due January 1, 2014, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. The Tenant made three payments totaling $1,550.00 ($350.00 + $900.00 + $300.00) as listed above, leaving a balance owing for January 2014 of $1,175.00 ($2,725.00 - $1,550.00) Based on the aforementioned, I award the Landlord unpaid rent up to January 1, 2014, in the amount of **$1,175.00.**

As noted above this tenancy ended **January 15, 2014,** in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and potential loss of rent for the period of February 1, 2014 to March 31, 2014.

The Landlord will not regain possession of the unit until after service of the Order of Possession and will have to find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire period of February 1, 201 to March 31, 2014, in the amount of **$1,700.00** (2 x $850.00).

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days after service upon the Tenant.** This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **$2,875.00** ($1,175.00 + $1,700.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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: March 17, 2014

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Residential Tenancy Branch