



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Affordable Housing Non-Profit Rental Association
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, MNSD, FF

Introduction

This was the hearing of an application by the landlord for an order for possession and a monetary order. The hearing was conducted by conference call. The landlord's representatives and the named tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order for possession pursuant to a 10 day Notice to End Tenancy for unpaid rent dated February 2, 2014?

Is the landlord entitled to a monetary award for unpaid rent and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Burnaby. The tenancy began in 2004. The tenant paid a security deposit of \$520.00 on July 10, 2004. The current monthly rent is \$1,170.00, payable on the first of each month. According to the landlord, the tenant has a history of repeated late payments of rent. The tenant did not pay rent on February 1, 2014. On February 2nd the landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent by posting it to the door of the rental unit. On February 6, 2014 the landlord sent a registered letter to the tenant stating that if the February rent was not paid by February 11th the landlord would make an application to the Residential Tenancy Branch for an order of possession for non payment of rent and any payments made after February 11th would be accepted "for use and occupation" only.

According to the landlord's evidence, the tenant made a partial payment of February rent in the amount of \$1,140.00 by money order that was received on February 12th. The landlord issued a receipt for the payment dated February 12, 2014. The receipt contained the notation: "For use and occupancy only".

The landlord's representative testified that the tenant has not made any rent payments since February 12th and the rent for March and April is now outstanding. In March the landlord served the tenant with a one month Notice to End Tenancy for repeatedly late payment of rent and amended its application to claim an order for possession on that ground as well.

The tenant testified that he was away with his daughter until February 11, 2014 and did not receive the Notice to End Tenancy until his return. He said that his daughter's purse was stolen and rent money that was in her purse was lost. He was able to pay the sum of \$1,140.00 by money order that was delivered to the rental office on February 11th after the office was closed. The tenant produced a photocopy of a cheque to the landlord dated January 1, 2013 in the amount of \$1,200.00. He said that this was evidence that the tenant had overpaid rent in the past and had a credit on his rental account that more than offset the shortfall in the payment of rent for February.

The tenant testified that he delivered cheques to the rental office in payment of March and April rent; he stated his belief that the landlord's representative was not being truthful when he said that no rent payments were received for March and April; he said that he obtained cheques made payable to the landlord from a relative and left them at the landlord's office and he doubted the assertion that no payments were found..

The landlord's representative referred to ledger records provided by the landlord and said that they showed there was no credit on the tenant's account; in fact the payment made by the tenant in January 2013 was given to pay arrears on his account. He also noted that an earlier dispute between the landlord and the tenant involving a Supreme Court judicial review proceeding had been settled and pursuant to a Supreme Court consent order dated December 20, 2013 the tenant was ordered to pay costs in the amount of \$700.00 that to date have not been paid.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. The tenant's evidence does not establish that he had grounds to withhold a portion of the rent due for February. He did not pay the full amount of rent that was due within five days of his actual receipt of the Notice to End Tenancy and he did not apply to dispute the Notice. The tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

Order of Possession - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit – I accept the evidence that \$30.00 is outstanding for February rent and payment for March and April has not been received. I find that the landlord has established a total monetary claim of \$2,370.00 for the outstanding rent for February, March and April. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$2,420.00. I order that the landlord retain the deposit and interest of \$538.41 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,881.59. This order may be filed in the 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: April 11, 2014

Residential Tenancy Branch

