



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and loss of rent revenue?

May the landlord retain the security deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on November 1, 2013. Rent is \$550.00 per month, due on the first day of each month. A security deposit in the sum of \$275.00 was paid.

The tenant confirmed receipt of a 10 day Notice to end tenancy for unpaid rent on May 5, 2014. The Notice was posted to the tenant's door on May 2, 2014; the date it was issued. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$550.00 within 5 days after the tenant was assumed to have received

the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within 5 days.

The Notice did not provide an effective vacancy date.

The tenant said that on May 11, 2014 he paid May rent. On May 13, 2014 the landlord issued a receipt for use and occupancy only. The receipt indicated that the tenancy was not reinstated.

The tenant said he paid 1 day late; the landlord said payment was made 3 days late.

The tenant confirmed that he has yet to pay June 2014 rent. The tenant explained that there had been a cheque issue problem with the government agency that issues cheques. The landlord said that he saw the envelope for the June rent payment, which he left in the mailbox for the tenant. The tenant said he has not received his June cheque and has an appointment to see a worker to arrange payment.

The landlord said the tenant understood he must pay the rent or his tenancy would end. The tenant stated that he paid the May rent in full and did not understand when he was required to vacate the unit.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3rd day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on May 5, 2014; the date he confirmed he received the Notice.

Section 52 of the Act provides:

Form and content of a notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) **state the effective date of the notice**,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

(Emphasis added)

As the Notice did not include an effective vacancy date I find that the Notice failed to meet the requirements set out in section 52 of the Act.

When considering a Notice that does not meet the requirements set out in section 52 of the Act, section 68 provides an avenue for amendment.

Director's orders: notice to end tenancy

- 68** (1) *If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*
- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*
 - (b) in the circumstances, it is reasonable to amend the notice.*
- (2) *Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,*
- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or*
 - (b) set aside or amend a notice given under this Act that does not comply with the Act.*

In this case I would not only be amending the Notice, I would be adding a date that was not provided at all. Section 53 of the Act allows correction of an effective date; however, the Notice issued on May 3, 2014 did not provide a date that could be amended. Therefore, I have determined that it is not reasonable to amend the notice by adding information that was completely omitted.

Therefore, in the absence of an effective vacancy date, I find that the 10 day Notice to end tenancy for unpaid rent issued on May 2, 2014 fails to meet the requirements of section 52 of the Act; that it is of no force and effect and is set aside. The tenancy will continue until it is ended in accordance with the Act.

The tenant was warned that June 2014 rent is immediately due. The landlord is at liberty to issue another Notice to end tenancy for unpaid rent and to seek an Order of possession should the rent not be paid.

Based on the acknowledgment of the tenant, I find that the landlord is entitled to compensation for unpaid June 2014 rent in the sum of \$550.00.

As the application has merit I find that the landlord is entitled to recover the \$50.00 filing fee cost.

The landlord may retain the \$275.00 security deposit in partial satisfaction of the claim for June 2014 rent.

Based on these determinations I grant the landlord a monetary Order in the sum of \$325.00 for June 2014 rent and the filing fee cost. In the event that the tenant does not

comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Pursuant to section 62(3) of the Act, I find that if the tenant pays June 2014 rent in the sum of \$550.00; the landlord will continue to hold a security deposit in the sum of \$275.00; less the \$50.00 filing fee. In this case the monetary Order will not be enforceable.

Conclusion

The Notice issued on May 2, 2014 is of no force and effect.

The landlord is entitled to compensation for June 2014 rent.

The landlord may retain the security deposit in partial satisfaction of the claim.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 09, 2014

Residential Tenancy Branch

