



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 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 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 his 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 testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on April 10, 2014. The landlord entered a copy of this 10 Day Notice into evidence and also a photograph of that Notice posted on the tenant's door. The landlord also entered into written evidence copies of earlier 10 Day Notices he said he posted on the tenant's door for unpaid rent owing for February and March 2014, as well as a 1 Month Notice to End Tenancy for Cause of February 26, 2014. The tenant testified that he did not receive any of these notices to end tenancy either on his door or as part of the landlord's written evidence package for this hearing. The landlord testified that his nephew who was at work witnessed him post the 10 Day Notice of April 10, 2014. He said that he did not know if his nephew would be able to answer the telephone as he might be driving at the time of the teleconference hearing.

I contacted the TELUS operator who was able to connect the landlord's nephew. The landlord's nephew gave sworn testimony that he witnessed the landlord tape the 10 Day Notice on the tenant's door on April 10, 2014 and again in May 2014. After the landlord's witness disconnected from this hearing, the landlord testified that his witness (his nephew) actually photographed the 10 Day Notice posted on the tenant's door on

April 10, 2014. The landlord also observed that the tenant signed the 10 Day Notice handed to him on February 14, 2014, a signed copy of which was entered into written evidence by the landlord. The landlord said that this called into question the credibility of the sworn testimony given by the tenant regarding the tenant's claim that he had not received any of the 10 Day Notices from the landlord.

In accordance with sections 88 and 90 of the *Act* and based on the sworn testimony before me, I find that there is convincing evidence that the tenant was deemed served with the 10 Day Notice of April 10, 2014 on April 13, 2014, the third day after its posting on the tenant's door.

The landlord entered written evidence and sworn testimony that he sent the tenant a copy of his dispute resolution hearing package by registered mail on April 25, 2014. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The landlord also testified that he posted this package on the tenant's door on May 13, 2014. The tenant confirmed that he received the Notice of Dispute Resolution hearing and the landlord's application sent by registered mail. 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 and written evidence on April 30, 2014, the fifth day after its registered mailing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? 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

The parties agreed that this periodic tenancy for the basement suite in the landlord's home began on November 1, 2013 on the basis of an oral agreement. Monthly rent is set at \$450.00, payable in advance on the first of each month.

Although the landlord applied for authorization to retain the tenant's security deposit, the landlord gave sworn testimony that no such security deposit was paid by the tenant. The tenant testified that he paid the landlord a \$250.00 security deposit when this tenancy began.

The landlord's application for a monetary award of \$1,350.00 was for unpaid rent he maintained was owing from March, April and May 2014. He testified that the tenant's

last payment to him was made in March 2014 for the tenant's February 2014 rent. The landlord did not dispute the tenant's claim that the landlord never issued any receipts for the tenant's cash payments to the landlord during this tenancy. The tenant testified that he never requested receipts from the landlord. The tenant testified that he has paid his March and April 2014 rent, but has not paid his May 2014 rent. He also said that he plans to vacate the rental unit by July 1, 2014, in accordance with a request from the landlord to do so.

Analysis

Based on a balance of probabilities and after hearing the parties' sworn testimony and considering the only written evidence before me, submitted as it was by the landlord, I find that the tenant has not paid rent for March, April or May 2014. When a tenant chooses to pay cash for the monthly rent and does not ask for nor obtain a receipt for such cash payments, the tenant has little evidence to demonstrate that this rent was actually paid. If that was the tenant's practice, the tenant bears the responsibility for failing to obtain a receipt for cash payments to the landlord. Under such circumstances, I find that it more likely than not, especially in light of the repeated 10 Day Notices issued to the tenant, that the tenant has not paid monthly rent for the months in question.

I also find that the tenant failed to pay the \$900.00 identified as owing in full in the 10 Day Notice of April 10, 2014 within five days of being deemed to have received the 10 Day Notice on April 13, 2014. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by April 23, 2014. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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. In this case, I find that \$1,350.00 in total rent is owed by the tenant to the landlord for the months of March, April and May 2014. I issue a monetary award in that amount to the landlord to recover this unpaid rent from the tenant.

On a balance of probabilities and based on the evidence before me, I find that the landlord's request to obtain authorization to retain the tenant's security deposit reveals that a security deposit was paid by the tenant for this tenancy. I accept the tenant's sworn testimony that he paid a \$250.00 security deposit for this tenancy. I allow the landlord to retain a security deposit of \$250.00 from this tenancy in order to partially offset the monetary award issued in the landlord's favour. As the landlord has been successful in this application, I allow the landlord to recover his filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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 the filing fee for this application, and to retain the security deposit the tenant said he paid in partial satisfaction of this monetary award:

Item	Amount
Unpaid March 2014 Rent	\$450.00
Unpaid April 2014 Rent	450.00
Unpaid May 2014 Rent	450.00
Less Security Deposit	-250.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,150.00

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: May 22, 2014

Residential Tenancy Branch

