



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 5, 2014, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. The Tenant signed into this proceeding 4 minutes late, at which time I told him the testimony I had heard from the Landlord prior to his attendance at the hearing. The Tenant submitted that he was not feeling well and was unable to proceed due to various medical conditions, including one that prevents him from leaving his home. When I told him that the hearing would be proceeding with or without his attendance the Tenant stated that he had no one who could assist him with this proceeding, so he would be staying. During the course of this proceeding the Tenant changed his testimony and indicated that he was calling from an advocate society's office and that they assist him with his paperwork. The Tenant stayed for the full duration of the hearing and provided clear testimony and arguments.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. However, each party had to be reminded numerous times not to interrupt me while I was speaking.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. 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

The Landlord initially testified that the parties entered into a written tenancy agreement and later clarified that he was referencing the Income Assistance Intent to Rent Form.

The Landlord submitted that rent was payable on the first of each month in the amount of \$750.00 and that Income Assistance was to pay \$500.00 and the Tenant's mother was to pay \$250.00. The Landlord stated that the Tenant has occupied the rental unit since September 1, 2010 and paid a security deposit of \$375.00. The Landlord submitted that he has only been paid \$500.00 per month from Income Assistance since September 2010. The Landlord argued that no additional payments had been received or paid on behalf of the Tenant.

The Landlord gave evidence that when the Tenant failed to pay April 2014 rent a 10 Day Notice was issued and posted to the Tenant's door on April 14, 2014 and again on June 23, 2014. The Landlord stated that he had attended dispute resolution prior to this hearing but that claim was dismissed with leave to reapply. He argued that no money has been paid for April, May, June, July, or August 2014, so he is seeking the Order of Possession and the Monetary Order for all the unpaid rent.

The Tenant testified that the Intent to Rent form was completed showing rent was \$500.00 per month because the Landlord agreed to reduce his rent. He stated that there was never an agreement that additional payments would be made of \$250.00 per month.

The Tenant submitted that he was required to submit additional information to Income Assistance and that when he was unable to do so it created a problem with his file and his assistance payments. The Tenant said that he was not aware that there was a problem with his rent until the Landlord started giving him forms which said he did not pay his rent. The Tenant was not able to provide the exact date of when he received the first form from the Landlord but thought it was only a few months ago.

The Tenant argued that he had agreed to leave the Landlord two envelopes with cash to pay a full month rent and a partial month rent. The Tenant stated he left the envelopes just outside his door; but the Landlord refused to give him receipts.

Upon clarification of the Tenant's testimony, the Tenant argued that rent for April and May 2014 had been paid by Income Assistance direct to the Landlord, June and July were not paid, and that August 2014 was paid. He stated that he is of the opinion that when his file at Income Assistance is straightened out, then they will pay the Landlord any outstanding rent.

In closing, the Landlord stated that the Tenant had told him to stop by and pick up an envelope but when the Landlord arrived there was no envelope to be found. He advised the Tenant who became upset saying someone stole his payments. He confirmed that

the Intent to Rent Form showed rent to be \$500.00 and no rent has been paid or received for April through to August, as previously stated.

Analysis

The undisputed testimony was that the parties signed an Intent to Rent Form that indicated rent was payable on the first of each month in the amount of \$500.00. The Tenant disputed that he had ever agreed to pay an additional \$250.00 per month. The Landlord confirmed that he had never received additional money for rent and only ever received \$500.00 per month since the onset of the tenancy in September 2010.

An Intent to Rent Form is not a tenancy agreement; accordingly, I find the parties entered into a verbal tenancy agreement that required the Tenant to pay rent of \$500.00 on the first of each month and the Tenant paid \$375.00 as the security deposit.

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

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 I accept that the Tenant was served the 10 Day Notice on April 4, 2014 and again on June 23, 2014. Therefore, the Tenant was deemed to have received the 10 Day Notice on April 7, 2014, three days after it was posted to the door the first time. Accordingly, I find the effective date of the Notice was **April 17, 2014**.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their position. In this case, the Tenant has the burden to prove that rent was paid since he was served with the 10 Day Notice. Accordingly, the only evidence before me, regarding the non-payment of rent, was disputed verbal testimony which I find is insufficient to meet the Tenant's burden of proof.

Based on the above I find that the Tenant neither paid the rent for April, May, June, July or August 2014, nor disputed the Notice; therefore, the Tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **April 17, 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 \$750.00 that was due April 1, 2014 as listed on the 10 Day Notice. That being said, the 10 Day Notice provides Important Facts that state *"An error in this notice or an incorrect move-out date does not make it invalid"*. As noted above, I found that rent was payable in the amount of \$500.00; therefore, I will only consider rent to be unpaid in the amount of \$500.00 each month.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord. Based on the aforementioned, I award the Landlord April 2014 rent in the amount of **\$500.00**.

As noted above this tenancy ended **April 17, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for May, June, July, and August 2014.

The Tenant continues to occupy the property; therefore, the Landlord will not regain possession of the unit until after service of the Order of Possession and will have to attempt to re-rent the unit as soon as possible. Therefore, I award the Landlord compensation for use and occupancy and any loss of rent for the period of **May 1, 2014 to August 31, 2014** in the amount of **\$2,000.00** (4 x \$500.00).

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

April 2014 Rent	\$ 500.00
Use & Occupancy and Loss of Rent to Aug 31, 2014	2,000.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,550.00
LESS: Security Deposit \$375.00 + Interest 0.00	<u>-375.00</u>
Offset amount due to the Landlord	<u>\$2,175.00</u>

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service 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 **\$2,175.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenants do 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: August 22, 2014

Residential Tenancy Branch

