



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR, OPC, MNR, MNSD, FF
Tenant: CNC, CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order. The tenants sought to cancel two notices to end tenancy.

The hearing was conducted via teleconference and was attended by both landlords and the tenant.

Towards the end of the hearing the tenant indicated that he had a recording of a phone conversation with the landlord from June 1, 2014 where she gave him a verbal notice to vacate the unit by July 15, 2014 so her relatives could move in to the rental unit.

I advised the tenant that if he had intended to rely upon this evidence it should have been submitted in accordance with the Residential Tenancy Branch Rules of Procedure prior to the hearing. In addition, I advised that even if he had submitted this evidence it would not be evidence that he received a **written** 2 Month Notice to End Tenancy for Landlord's Use of Property.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an order of possession for unpaid rent and/or for cause; to a monetary order for unpaid rent and utilities; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 46 and 47 of the *Act*.

Background and Evidence

The landlords submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on February 4, 2012 for a month to month tenancy for the monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 paid;
- A copy of a 1 Month Notice to End Tenancy for Cause issued on June 19, 2014 with an effective vacancy date of July 31, 2014 citing the tenant is repeatedly late paying rent; the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk; and the tenant has engaged in illegal activity that has or is likely to damage the landlord's property;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued by the landlord with an effective vacancy date of July 15, 2014 due to unpaid rent in the amount of \$1,547.50 and utilities in the amount of \$35.32 after a written demand on July 1, 2014; and
- Copies of 10 Day Notices to End Tenancy for Unpaid Rent or Utilities issued on June 3, 2014; April 11, 2014; and February 13, 2014.

The landlords submit the tenant has failed to pay rent and utilities in the amount of \$347.50 for the month of June; \$1,200.00 for the month of July 2014; \$1,200.00 for the month of August 2014 and utilities for July in the amount of \$98.76. The landlords have submitted utility bills into evidence.

The parties both acknowledge that on August 2, 2014 the tenant had provided the landlord with two bank drafts. One draft was in the amount of \$347.50 and one was for \$600.00. The tenant submits that the first one was for the rent and utilities owed for June 2014 and the second one was for ½ month's rent for August 2014.

The landlord submits that after receiving advice from the Residential Tenancy Branch she returned the bank drafts to the tenant's mailbox and sent him a text saying so two days later. The tenant submits that he has contacted his bank and they will ensure that if the drafts are not negotiable now that he has reported them missing.

The tenant submits that on June 1, 2014 he received verbal notice from the landlord that the tenant would need to vacate the rental unit by July 15, 2014 so that relatives of the landlord could move into the rental unit. He stated that as a result he found and put a deposit on another rental unit. He states that he later decided not to take that unit and found a new rental.

The tenant acknowledges that he did not pay rent for the month of July 2014 because he believes that he was entitled to compensation equivalent to one month's rent for the landlord's verbal notice to end tenancy for personal use. He also stated that he believed that because the landlord had given him his verbal 2 Month Notice to End Tenancy on June 1, 2014 he did not need to vacate the unit until August 31, 2014.

Analysis

While the landlord has identified other potential losses such as utilities for August 2014 and rent for September 2014, I have not considered these claims as any such losses have not been realized as of the date of this hearing.

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if:

- i. The rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;
- ii. A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family member owns, all the voting shares;
- iii. All conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give a notice because the purchaser or a close family member intends in good faith to occupy the rental unit;
- iv. The landlord has all the necessary approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- v. The landlord intends to convert the residential property to strata lots or a not-for-profit housing cooperative;
- vi. The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent for the residential property; or
- vii. The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use.

Section 52 of the *Act* stipulates that for a notice to end tenancy issued by the landlord to be effective the notice must be in writing; be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice; state the grounds for ending the tenancy and be in the approved form.

Section 51 of the *Act* states a tenant who receives a notice to end tenancy under Section 49 (landlord's use of property) is entitled to receive from the landlord compensation equivalent to one's month rent payable under the tenancy agreement.

Despite the tenant's testimony that he received a verbal notice from the landlords to end the tenancy for landlord's use of property, I find that even if the landlords did verbally advise him of an intention to end the tenancy for personal use they did not issue such a notice in writing as is required by Section 52.

As such, I find the tenant is not entitled to withhold any payment of rent as compensation for receiving a written notice under Section 49, pursuant to Section 51. As such, I find the tenant owes the landlord rent for July 2014. I also accept that as of July 1, 2014 the tenant had failed to full amount of rent and utilities owed to the landlord for the month of June 2014 in the amount of \$347.50. As a result, I find that the 10 Day Notice to End Tenancy issued by the landlord on July 2, 2014 is a valid and enforceable notice pursuant to Section 46 of the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Further as I have found that 10 Day Notice to End Tenancy is a valid and enforceable Notice and that the tenancy has ended I find that it is moot to determine the effectiveness of the 1 Month Notice to End Tenancy for Cause. As such, I make no findings of fact or law in relation to the 1 Month Notice.

Based on the testimony of both parties, I also find that despite the attempt by the tenant to pay the \$347.50 owed for June, 2014 and \$600.00 for part of August 2014 that that payment has not been completed and that the tenant can be reimbursed by his financial institution for the bank drafts that have gone missing.

As such, I find that the outstanding rent and utilities owed to the landlord includes \$347.50 for June, 2014; \$1,298.76 for July 2014; and \$1,200.00 for August 2014.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,896.26** comprised of \$2,846.26 rent and utilities owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,296.26**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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

