



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNDC, FF
CNR

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee; and ii) by the tenant for cancellation of a notice to end tenancy for unpaid rent. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the tenancy began on November 23, 2011. Monthly rent is \$550.00, and a security deposit of \$275.00 was collected. The tenancy agreement provides that rent is due and payable in advance on the first day of each month, whereas a separate document reflects an agreement between the parties that rent is due on the 23rd day of each month. During the hearing the parties agreed that rent is usually paid a day or two either side of the 23rd day of each month.

The landlord issued a 10 day notice to end tenancy for unpaid rent dated July 11, 2014. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The tenant filed an application to dispute the notice on July 15, 2014. The landlord testified that the tenant made no further payment toward rent after issuance of the notice. The tenant testified that while he made a partial payment, a full payment of overdue rent was not made after issuance of the notice.

It appears that unpaid rent is limited to 2014. However, as to the arithmetic details, the parties are not in agreement as to how much has been paid and how much is still owed. The landlord filed an application for dispute resolution on July 29, 2014.

Analysis

Based on the documentary evidence and testimony, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated July 11, 2014. While the tenant filed an application to dispute the notice within 5 days of receiving it, the tenant did not pay the full amount of outstanding rent within 5 days of receiving the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, the tenant's application to cancel the notice is hereby dismissed, and I find that the landlord has established entitlement to an **order of possession**.

As the landlord has succeeded with the application for an order of possession, I find that she has established entitlement to recovery of the filing fee. I order that the landlord may recover that fee by way of withholding **\$50.00** from the tenant's security deposit.

As to the landlord's application for a monetary order as compensation for unpaid rent, in view of the conflicting testimony of the parties, and in the absence of sufficient conclusive documentation such as receipts, a ledger or bank statements for example, this aspect of the landlord's application is hereby **dismissed with leave to reapply**.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenant's application is dismissed, and I hereby order that the landlord may withhold **\$50.00** from the tenant's security deposit in order to recover the filing fee.

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: September 17, 2014

Residential Tenancy Branch

