



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes:

OPR; MNR;

Introduction

This is a Review Hearing pursuant to the provisions of Section 82(c) of the Act. On August 27, 2014, a Decision was reached by way of Direct Request, pursuant to Section 55(4) of the Act. The Decision was based on an undisputed 10 Day Notice to End Tenancy and the written submissions of the Landlord. The Arbitrator provided the Landlord with an Order of Possession effective 2 days after service upon the Tenant and a Monetary Order for unpaid rent in the amount of \$1,400.00.

On September 9, 2014, the Tenant applied for Review Consideration on the grounds that he had not been served with the 10 Day Notice to End Tenancy or the Notice of Direct Request Proceeding documents. The Tenant also alleged that rent had been paid in full.

On September 27, 2014, the Reviewing Arbitrator allowed the Tenant's application for a new Hearing and ordered that the Tenant serve the Landlord with a copy of his Decision and copies of all documents submitted in support of his Application for Review Consideration. The Order of Possession and Monetary Order were suspended until the outcome of this Review Hearing.

The Landlord's agent SN and the Tenant gave affirmed testimony at the Hearing.

The Tenant testified that he served the Landlord with Notice of the Review Hearing by leaving the document in the Landlord's mailbox "within three days of receipt" of the Notice of Hearing from the Residential Tenancy Branch. The Tenant stated that he did not give the Landlord copies of the Decision on the Application for Review Consideration or copies of his documentary evidence in support because he misread the Reviewing Arbitrator's Decision.

The Landlord's agent SN testified that the Tenant did not serve the Landlord with any documents and that the Landlord found out about the Hearing by calling the Residential Tenancy Branch to ask whether the Tenant had filed an Application for Review. SN

stated that the Residential Tenancy Branch provided the Landlord with a copy of the documents.

Preliminary Matter

The Tenant stated that he is moving out of the rental unit at the end of the month. The Landlord agreed to accept an Order of Possession effective October 31, 2014. Therefore, I find that the parties reached a mutual agreement to end the tenancy on October 31, 2014, at 1:00 p.m. In support of this agreement, I hereby provide the Landlord with an Order of Possession.

Issues to be Decided

- Is the Landlord entitled to a monetary award for unpaid rent, and if so in what amount?

Background and Evidence

The Landlord's agent SN testified that monthly rent is \$1,200.00, due on the 15th day of each month. SN stated that the Tenant owes rent in the amount of \$200.00 for the month of June and \$1,200.00 for the month of July, 2014. The Landlord served the Tenant with the 10 Day Notice to End Tenancy for unpaid rent in the amount of \$1,400.00 on August 5, 2014.

The Tenant testified that rent was \$1,200.00 at the beginning of the tenancy, approximately two years ago, but that in or around June, 2014, the Landlord told the Tenant that she was entitled to a rent increase in the amount of \$100.00 per year and therefore his rent would be \$1,400.00 effective June 15, 2014. He stated that he paid the Landlord \$1,400.00 in cash but the Landlord did not provide him with a receipt. The Tenant stated that the only receipt the Landlord ever gave him was when he moved into the rental unit.

SN acknowledged that the Landlord did not give receipts for rent paid in cash. He testified that the Landlord did not increase the rent and disputed that the Tenant had paid rent in full, in cash or any other method. SN stated that the Landlord has documentary evidence to support her claim for unpaid rent, but that she did not provide it because she did not know what the Tenant based his application for review on.

Analysis

The onus is on the Landlord to prove her claim for a monetary award for unpaid rent. The Landlord did not provide documentary evidence to refute the Tenant's allegation that she had illegally increased the rent in June, 2014. She submitted that she did not

provide evidence because the Tenant did not provide the Landlord with copies of his documentary evidence in support of his Application for Review Consideration. The Tenant acknowledged that he did not give the Landlord this evidence, contrary to the Order made September 18, 2014.

It is a requirement of the Act that landlords provide tenants with receipts for rent paid in cash. In this case, the Landlord acknowledged that she did not comply with the Act.

I find that neither party complied with the Act with respect to this tenancy. The Landlord failed to provide receipts for rent paid in cash and the Tenant did not comply with an Order of the Director. Therefore, in the interest of fairness to both parties, I dismiss the Landlord's application for a monetary award for unpaid rent **with leave to reapply**. The Landlord will have an opportunity to provide evidence to support her claim that the Tenant did not pay rent in the amount of \$200.00 for June, 2014, and did not pay rent in the amount of \$1,200.00 for July, 2014. The Tenant will have an opportunity to provide evidence to support his claim that rent was paid in full.

Conclusion

I hereby set aside the Decision and Orders dated August 27, 2014. I provide the Landlord an Order of Possession effective **1:00 p.m., October 31, 2014**, based on a mutual agreement to end the tenancy. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord's claim for a monetary award for unpaid rent is **dismissed with leave to reapply**.

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: October 22, 2014

Residential Tenancy Branch

