



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GRANDVIEW CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for orders as follows:

1. an order of possession for the breach of a material term of the tenancy agreement pursuant to section 55;
2. a monetary order for unpaid rent and compensation for the tenant’s continued use of the rental unit pursuant to section 67; and
3. to recover the filing fee from the tenant for the landlord’s cost of this application pursuant to section 72.

I accept the landlord’s undisputed evidence that he served the tenant with the dispute resolution package. Both the landlord and the tenant appeared and were given full opportunity to be heard, to present sworn evidence and to make submissions.

The landlord filed evidence with the Residential Tenancy Branch on 20 October 2014. This was the only written evidence provided to me by either party. This evidence included receipts and a ledger setting out the landlord’s losses. This evidence was not filed within the time limit prescribed in the Rules of Procedure, rule 3.14. The landlord admitted that he did not serve the tenant with this evidence. Included in this evidence is a new claim for damages for the landlord being “delayed from future planning for 2 months” in the amount of \$6,000.00. The landlord did not amend his claim within the 14-day time frame provided for in the Rules of Procedure, rule 2.11. As the tenant was not served, and the new claim would have significantly prejudiced the tenant, I will not be considering this new claim or the evidence contained therein.

I did, however, ask the landlord at the hearing to provide me with a copy of the tenancy agreement after the hearing had concluded by fax, as neither party had provided me a copy of this critical piece of evidence. The tenant admitted that he had a copy of the same agreement and there was no dispute between the landlord and tenant as to its form or content. Accordingly, there was no prejudice to the tenant in my acceptance of this evidence, received on 23 October 2014. I have taken this evidence into consideration in reaching my decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to section 55 of the Act? Is the landlord entitled to a monetary award for unpaid rent and the tenant's use of the rental unit pursuant to section 67 of the Act? Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to section 72 of the Act?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the tenant and landlord, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

The landlord and the tenant entered into a tenancy agreement dated 30 May 2014. The tenancy was a fixed term tenancy for three months: 1 June 2014 to 31 August 2014. Rent was payable monthly at a rate of \$800.00. The landlord and tenant both initialed the agreement indicating that at the end of the fixed term the tenant must move out of the rental unit. The landlord and tenant both confirmed that they understood they were entering into a fixed term tenancy under these terms.

The landlord testified that, before the termination of the fixed term, the tenant asked if he could extend the term of the agreement. The tenant testified that in July he asked to extend the tenancy for an extra month. Both parties agreed that the landlord advised the tenant that he would ask his business partner about the tenant's request. The landlord testified that, shortly after the tenant made the request, the landlord let him know that they would be unable to extend the tenancy. The tenant provided similar testimony, noting that the landlord provided this response on 4 August 2014.

The tenant provided evidence that there were issues with the condition of the rental unit, including the presence of rats. At the hearing, I noted that the tenant had not filed any cross-application and, accordingly, I would not be considering this evidence as it was not relevant to the termination of the fixed-term tenancy.

The landlord provided testimony that the tenant did not pay rent for August and did not pay for the use and occupancy of the rental unit for either September or October. Both the landlord and tenant testified that the tenant is still occupying the rental unit with his family.

Analysis

Paragraph 44(1)(b) of the Act provides that a tenancy ends if:

the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy...

A landlord has a right to the possession of a rental unit where the tenancy has ended. From the evidence of both parties and the tenancy agreement it is clear that the tenant and landlord had entered into the type of agreement contemplated in paragraph 44(1)(b) of the Act. I find that the tenancy under this agreement ended 31 August 2014.

The tenant did not pay rent in August. The tenant did not provide any valid reason why he failed to do so. The landlord is entitled to this rent in the amount of \$800.00.

A landlord and tenant may enter into a subsequent agreement to renew the tenancy in respect of the same property. The issue in this application is whether or not the tenant and landlord had entered into such an agreement.

The tenant and landlord both agree as to the conduct of the negotiations around subsequent agreement:

1. the tenant asked to continue to occupy the rental unit for an extended period;
2. the landlord said he would have to ask his business partner; and
3. the landlord said that he would be unable to extend the tenant's occupancy.

At a minimum, in order to have established any new and valid contract, there must be offer, acceptance and exchange of consideration. Based on the parties' undisputed testimony, there was no acceptance on behalf of the landlord. Accordingly, I am unable to find that the tenant and landlord agreed to enter into an agreement that would have renewed the tenant's right to occupy the rental unit.

As there has been no subsequent agreement that would allow the tenant's current occupation, I find that the tenant has overheld the rental unit past the expiration of the tenancy on 31 August 2014. Therefore, I find that the landlord is entitled to an order of possession.

Pursuant to section 57 of the Act, a landlord may make a claim for compensation from an overholding tenant. The tenant did not pay for the use and occupancy of the rental unit for September or October. As the tenant has been occupying the unit beyond the termination of the tenancy, the landlord is entitled to compensation for the tenant's use and occupancy. The landlord is entitled to a monetary order in the amount of \$1,600.00 for the tenant's use of the rental unit for the months of September and October 2014.

As the landlord has been successful in this application, he is entitled to recover his filing fee of \$50.00.

Conclusion

I grant an order of possession to the landlord effective **two days after service of this order** on the tenant(s). Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Pursuant to sections 57 and 67 of the Act, I find that the landlord is entitled to a monetary order as follows:

Item	Amount
Rental Arrears for August 2014	\$800.00
Compensation for Overholding for September and October 2014	1,600.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$2,450.00

The landlord is provided with a formal order in the above terms. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: October 27, 2014

Residential Tenancy Branch