



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MT, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications. The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent, for more time to apply to cancel the Notice to End Tenancy, and to recover the fee for filing this Application for Dispute Resolution. The Landlord stated that he only received the first page of the Tenant's Application for Dispute Resolution by mail on, or about, October 20, 2014.

The Landlord stated that on October 18, 2014 the Landlord's Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant at the rental unit, via registered mail. The Landlord submitted a Canada Post receipt that corroborates this statement.

The Landlord stated that he went to the rental unit in early October of 2014 at which time a male told him that he was renting the unit from the Tenant and that the Tenant no longer lives in the rental unit. The Landlord stated that the Tenant has never informed him that he is not living in the rental unit or that the tenancy is ending.

In the absence of evidence from the Tenant to show he is not living in the rental unit and in the absence of evidence to show that the Tenant ended the tenancy, I find it reasonable to conclude that the Tenant is still living in the rental unit. Although I accept that an unknown person who answered the door at the rental unit informed the Landlord that the Tenant is not living at the rental unit, I find it entirely possible that this person was being dishonest.

In determining that it is reasonable to conclude that the Tenant is still residing at the rental unit I was influenced by the Tenant's Application for Dispute Resolution, in which the Tenant has indicated his service address is the address of the rental unit.

In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89(2)(b) of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession or should the Notice to End Tenancy for Unpaid Rent be set aside, and should the Tenant be granted more time to apply to set aside the Notice to End Tenancy?

Background and Evidence

The Landlord stated that he has a verbal tenancy agreement with the Tenant, who agreed to pay rent of \$1,200.00 by the first day of each month. He stated that only \$600.00 in rent was paid for August and that no rent has been paid for September, October, or November of 2014.

The stated that on October 07, 2014 he posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of October 17, 2014, on the door of the rental unit. The Notice declared that the Tenant owed \$3,000.00 in rent that was due on October 01, 2014.

Analysis

The hearing was scheduled for 10:30 a.m. on this date and by 11:00 a.m. the Landlord had appeared, but the Tenant had not appeared. I find that the Tenant failed to diligently pursue the Tenant's Application for Dispute Resolution and I therefore dismiss that Application without leave to reapply.

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,200.00 by the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord when it is due. On the basis of the undisputed evidence, I find that the Tenant still owes \$3,000.00 in rent for the period between August 01, 2014 and October 31, 2014. I therefore find that he must pay this amount to the Landlord.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper notice. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*, was posted at the rental unit on October 07, 2014.

As rent for October of 2014 is still outstanding and the Tenant has been properly served with a Ten Day Notice to End Tenancy, I find that the Landlord has grounds to end this tenancy pursuant to section 46 of the *Act*. I therefore find the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit on the effective date of the Notice, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the month of October, I find that the Landlord has been fully compensated for that month. I also find that the Tenant must compensate the Landlord for the 26 days in November that the Tenant has remained in possession of the rental unit for, at a daily rate of \$40.00, which equates to \$1,040.00.

I find that the Tenant fundamentally breached the tenancy agreement when he did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when he did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit makes it difficult, if not impossible for the Landlord to find new tenants for the remainder of November of 2014. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it can be reasonably expected to experience in the last four days of November, which is \$160.00.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$4,250.00, which is comprised of \$4,200.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$4,250.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: November 26, 2014

Residential Tenancy Branch

